

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO. 77-4091

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

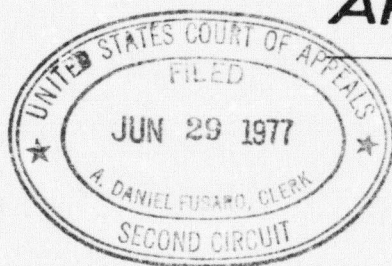
v.

COLUMBIA CORRUGATED CONTAINER CORP.,

Respondent.

**ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

APPENDIX



ELLIOTT MOORE,

*Deputy Associate General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.*

PAGINATION AS IN ORIGINAL

I

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II

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Columbia Corrugated Container Corp.,

Case No.: 29-CA-4358

5.16.75	Charge filed
9.12.75	Complaint and Notice of Hearing, dated
9.29.75	Respondent's Answer, received
11.10.75	Order Rescheduling hearing, dated
12.11.75	Respondent's request for postponement of hearing, dated
12.11.75	Order Rescheduling hearing, dated
2. 2.76	Hearing opened
2. 4.76	Hearing closed
3.19.76	Respondent's Motion to correct transcript, dated
4.26.76	Administrative Law Judge's Decision, issued
5.26.76	Respondent's Exceptions to the Administrative Law Judge's Decision, received
9.27.76	Board's Decision and Order, dated

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD

2 Twenty-Ninth Region

3 -----:

4 In the Matter of :

5 COLUMBIA CORRUGATED CONTAINER CORP., :

6 -and- :Case No.29-CA-4358

7 JOHN W. STALLWORTH, An Individual. :

8 -----:

9 16 Court Street,
10 Brooklyn, New York
Monday, February 2, 1976.

11 The above-entitled matter came on for
12 hearing commencing at 3:30 o'clock P. M.

13 BEFORE:

14 MORTON D. FRIEDMAN,

15 Administrative Law Judge.

16 APPEARANCES:

17 ELIZABETH KINNEY, ESQ. Attorney for the General Counsel,
18 16 Court Street,
Brooklyn, New York

19 CHARLES R. KATZ, ESQ. Attorney for the Respondent,
20 360 Lexington Avenue,
New York, New York

I N D E XWITNESSDIRECTCROSS

John W. Stallworth

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E X H I B I T SGENERAL COUNSEL
NO.FOR IDENTIFICATIONIN EVIDENCE

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RESPONDENT

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P R O C E E D I N G S

JUDGE FRIEDMAN: The hearing is open.

The name of the Administrative Law Judge is Morton D. Friedman, F-r-i-e-d-m-a-n.

Will counsel please note their appearances for the record?

MS. KINNEY: Elizabeth Kinney, counsel for the General Counsel, National Labor Relations Board, 16 Court Street, Brooklyn, New York.

MR. KATZ: For the Respondent, Charles R. Katz, 360 Lexington Avenue, New York, New York, zip code 10017.

JUDGE FRIEDMAN: All right.

Will the Charging Party be asking any questions?

MR. KATZ: No.

JUDGE FRIEDMAN: All right.

I just want to get by that hurdle off the bat.

All right, then Ms. Kinney, just a couple of things before we get started.

I like to have reasons for any objections or exceptions, so I will know what I'm ruling on.

Mr. Katz, I presume, since you have been

1 before the Board a number of times, you know that all
2 documentary evidence must be submitted in duplicate.
3 If you don't have duplicates, you may move to withdraw
4 whatever you introduce to make duplicates, but it must
5 be returned to the reporter within three days. Note
6 that three days is the outside time.

7 Everything in the hearing room is to be
8 conducted on the record unless I am specifically re-
9 quested to go off the record, and I will entertain mo-
10 tions to go off the record.

11 The last thing that I have to say is
12 at any time during this proceeding if any party would
13 like some time to talk over possible settlement and if
14 I could be of any assistance in that respect, I will
15 be happy to be of any assistance I can be.

16 With that, Ms. Kinney, you may proceed.

17 Before you begin, notice that the Re-
18 spondent denies knowledge and information with regard
19 to the union under Paragraph 6.

20 Can we get a stipulation?

21 MR. KATZ: That is a former counsel in
22 the case before I stepped in. I have an amended answer
23 which I have typed out which admits that at the proper
24 time.

25 There is also a denial of the service of

1 the charge in the case.

2 JUDGE FRIEDMAN: That I got from the
3 formal documents. That I don't even worry about.

4 MR. KATZ: At the proper time, after I
5 assume counsel for the General Counsel introduces the
6 formal documents, I would like to offer the amended
7 answer.

8 JUDGE FRIEDMAN: Surely.

9 All right, Ms. Kinney, you may proceed.

10 Before you begin, I would like to know the
11 theory of the case. It is kind of an unusual complaint
12 here, I think, and I would like to know what your theory
13 is.

14 MS. KINNEY: Sure.

15 I have basically a brief opening statement.
16 Would you like that at this point?

17 JUDGE FRIEDMAN: Either that, introduce
18 your formal documents first and get the amended answer
19 in, and then we will get an opening statement.

20 MR. KATZ: Can we go off the record for
21 a minute?

22 JUDGE FRIEDMAN: Off the record.

23 (Discussion off the record.)

24 JUDGE FRIEDMAN: On the record.

25 All right.

1 MS. KINNEY: At this time General Coun-
2 sel would like to offer General Counsel's Exhibit No. 1.

3 It has been shown to the parties.

4 It consists of, No. 1, A through J, which
5 constitutes the index to the formal papers.

6 JUDGE FRIEDMAN: All right.

7 I heard there were no objections?

8 MR. KATZ: No objections.

9 JUDGE FRIEDMAN: We will receive them.

10 (Document marked and received in evidence
11 as General Counsel's Exhibit No. 1, as of this date.)

12 MS. KINNEY: Your Honor, at this time
13 it is my understanding that Respondent wishes to amend
14 its answer.

15 JUDGE FRIEDMAN: That is right. I was
16 so informed.

17 MR. KATZ: At this time, having been
18 retained in this case Thursday of last week, I reviewed
19 the answer file and have prepared and wish to submit
20 an amended answer.

21 In substance, it now admits the status
22 of the labor organization, it admits receipt of the
23 charge, so that those who examine it will know precise-
24 ly what I have in mind.

25 There is one additional change and I
allege one affirmative defense.

1 The one change is that the Respondent
2 denies the allegation of Paragraph 11, except that it
3 admits that the employee was assumed to quit.

4 JUDGE FRIEDMAN: That is right.

5 MR. KATZ: It is not so. When I say
6 "not so," the pleadings are not in that category so I
7 have really said we deny the allegation of the complaint
8 and I have alleged as an affirmative defense that the
9 dispute herein is best determined by and should be sub-
10 mitted to an arbitration, because I think the determin-
11 ation of this case will, of necessity, involve an inter-
12 pretation of clauses of the contract.

13 So at this time I would like to offer two
14 copies of our amended answer.

15 JUDGE FRIEDMAN: After I hear the open-
16 ing statement of General Counsel, Mr. Katz, I will take
17 argument on your affirmative defense with regard to the
18 possibility of referring this to arbitration. But I
19 think that I may have to take some record just to see
20 whether or not it is arbitrable.

21 All right, we will receive it.

22 (Document received in evidence as Re-
23 spondent's Exhibit No. 1, as of this date.)

24 MS. KINNEY: Your Honor, this case involved
25 Columbia Corrugated Container. It is a manufacturer of

1 corrugated cardboard containers.

2 The Charging Party is John W. Stallworth.
3 He worked for Columbia for several years as a head sort-
4 er in their printing department.

5 The Respondent has had a collective bar-
6 gainin g agreement for a number of years with Local 381
7 of the Paper Workers.

8 One of the provisions of the collective
9 bargaining agreement required that in the event there
10 is to be a layoff of workers, the work available has
11 to be shared amongst the workers.

12 In addition, this Respondent has had a
13 policy for many years of having two shutdowns of the
14 plant operations during the course of each year, one
15 in the summer and one in the winter.

16 In the fall of 1974, a notice was sent
17 out to the employees concerning the annual shutdown
18 in December of '74, running into '75.

19 Thereafter, the Respondent determined
20 that layoffs owuld have to be made.

21 General Counsel intends to show that
22 employee Stallworth was approached in around the begin-
23 ning of December by an official of the company and
24 asked if he would sign a statement waiving his rights
25 under the work-sharing agreement of the contract and

1 agreeing to a layoff.

2 Mr. Stallworth refused the foreman. He
3 said he wouldn't agree to sign to be laid off.

4 He was later asked by Respondent's presi-
5 dent if he would sign the waiver, why he didn't sign
6 the waiver, and again he refused to sign agreeing to
7 be laid off.

8 A few days later, along with his pay, he
9 received a layoff slip. This was on December 13, 1974.

10 He heard nothing further until he went
11 down and got his unemployment.

12 He heard nothing further until early
13 January, 1975, when he received a letter from the com-
14 pany saying "Since you didn't report for work January 6,
15 we assume you quit."

16 He never, as far as he knew, he had not
17 been called back to work. He was waiting to hear.

18 He went out to the company and couldn't
19 find out why he got this letter.

20 Later on the company contested his un-
21 employment, he had an unemployment hearing, and he was
22 awarded unemployment compensation.

23 Thereafter, he received word from one of
24 his co-workers that he was to go back to work, and he
25 went out to the company, was advised by the foreman that

1 they had made a mistake, that he wasn't to come back.
2 He went to speak again to the president of the company,
3 who told him that since he had given him such a hard
4 time before about not signing the paper, as far as he
5 was concerned, he wasn't an employee any more.

6 It is General Counsel's contention that
7 Respondent violated Section 5(a)(1), and (3) of the
8 Act by the termination of Stallworth for refusing to waive
9 his contractual rights with respect to work-sharing.

10 We further contend that they violated
11 the Act in the alternative by failing to reemploy him
12 when he went out in late winter and early spring and he
13 spoke to--

14 JUDGE FRIEDMAN: Any charge filed in be-
15 tween those two times?

16 MS. KINNEY: The charge was filed in May.

17 JUDGE FRIEDMAN: Well, what is the theory
18 of the refusal to sign the layoff under the contract?

19 MS. KINNEY: In other words, Stallworth
20 was asked if he would waive his contract rights, his
21 rights secured to all the employees under the collective
22 bargaining agreement, to share in work.

23 The contract provides that when work be-
24 comes scarce, the available work has to be divided up
25 amongst the workers so each gets a share of it.

1 As I understand it, they have to do this
2 for 30 days. Then they can have layoffs.

3 What he refused to do was waive his rights
4 to receive the work that he would have been allotted
5 under the contract, the work-sharing.

6 JUDGE FRIEDMAN: In other words, the most
7 he would have gotten after that was thirty days, is that
8 right, or we don't know that?

9 MS. KINNEY: Well, as it turned out, they
10 included the winter, the shutdown, in the 30 day period,
11 so he wouldn't have gotten too much work. Maybe he
12 would have gotten one week, I think, but the theory is
13 that in relation for him being the only one who wouldn't
14 sign the waiver, he was terminated.

15 JUDGE FRIEDMAN: But how do you make this
16 out to be--let us assume that all the facts as stated
17 are so and the latter part I could understand, but assum-
18 ing the first part, the first refusal and the layoff was
19 caused by his refusal to sign a waiver, how is this 8(a)(1)?

20 MS. KINNEY: He was asserting his rights
21 under the contract when he refused to sign to be laid off.

22 JUDGE FRIEDMAN: A single assertion?

23 MS. KINNEY: Although that is protected
24 activity.

25 JUDGE FRIEDMAN: Yes, all right. I under-

1 stand what your theory is now.

2 All right, Mr. Katz.

3 MR. KATZ: It is the Respondent's position
4 that factually it did not terminate him or lay him off
5 because of his refusal.

6 There were at this layoff period some
7 25 or so employees involved. We will show that the
8 question of rather than sharing the work, whatever the
9 contract law means, and I think it is ambiguous, and I
10 think the only one who can interpret that is an arbi-
11 trator and not the Board because the interpretation of
12 that clause is not similar to the line of cases where
13 the Board has to make a determination of the contract
14 as a necessary element of an unfair labor practice.

15 But getting back to this problem of the
16 25 or so employees who were involved in the layoff, the
17 contract provides that you first lay off the most junior
18 people. They were out; there is no problem.

19 The second tier of people in which Mr.
20 Stallworth was involved, then for the next 30 days has
21 the right to share the work.

22 The question arises what is meant by
23 sharing of the work. Do you or do you not take into
24 consideration the two-week layoff on December 23rd to
25 January 5th, which has been historical closing down of

1 the plant over the years.

2 We say that Stallworth, and this is an is-
3 sue of credibility, I don't know how important it becomes
4 in the overall case, is that it was made clear to him
5 that the union and the stewards had asked for this--
6 this was not something the company wanted--because they
7 wanted to get the benefits of unemployment insurance be-
8 cause on the layoff, what would have happened very simply,
9 so we get the posture of this case, December the 13th,
10 the group that Stallworth was in, some 25 or so people,
11 were going to be laid off.

12 They were then to come back to work, since
13 the plant was then going to be closed for two weeks, some-
14 time in January.

15 The union said to the employer, in sub-
16 stance, "Look, most of the people, practically everyone
17 would rather take a layoff in this December. They
18 will file for unemployment insurance. It doesn't pay
19 for them to work one week in January and then take the
20 layoff to January 13th and then have to apply for un-
21 employment insurance.

22 So the employer, as a prudent employer,
23 prepared this form, and we will show how it was given
24 to the people, what they were told about it, and particu-
25 larly with respect to Mr. Stallworth, it was made crystal
clear to him that if he didn't want to sign it, he would

1 have one more week of work, that he was to come back on
2 January 6th.

3 I don't think there is any doubt that he
4 did not come back, no dispute about it.

5 The contract has a provision in it, the
6 rules and regulations which have been in effect for many,
7 many years, provides that if an employee does not come
8 back within forty-eight hours after he is supposed to,
9 he is deemed to have quit.

10 What is most amazing in this is that this
11 incident happened in January. The union and the em-
12 ployer have had very excellent labor relations over the
13 period of years. The contract, which will eventually
14 be introduced in evidence, shows it is a master con-
15 tract covering, I don't know, some ten or fifteen dif-
16 ferent employers in the corrugated paper box industry.

17 You find a situation where this employee
18 says he wants to work and yet when it comes time to
19 work, he doesn't show up. He doesn't go to the union,
20 he doesn't file a grievance.

21 He doesn't do a thing on this thing un-
22 til comes May when he files a charge before this Board.

23 Now, if he had done what he should have
24 done and filed his grievance, this thing would have
25 been resolved a long time ago.

1 On the issue of whether he was told to
2 come back on the 6th or whatever, his theory is now that
3 he says he didn't know or he should have come back.

4 We would have resolved this whole issue of
5 this 30 day share work, which we will show that at the
6 very least the union acquiesced in this theory, and we
7 say where you have a collective bargaining relationship,
8 it is an ongoing relationship, of necessity. It is
9 almost a day-to-day operation.

10 It requires interpretation of contracts
11 and the Board has even gone further. The Board has said
12 that it believes it best to permit the parties to con-
13 tracts to amend them and any of the substantive provi-
14 sions during the term thereof.

15 This is what is in the best interests of
16 the employer and the union, so whether you deem this
17 sharing of the work provision for 30 days or four actu-
18 al weeks of work or you consider 30 days, including the
19 two weeks when the plant was closed down, the parties
20 have an absolute right to make that kind of an interpre-
21 tation, and then this gentleman falls into the situation
22 where he should have come back to work on January 6th
23 and never showed up.

24 JUDGE FRIEDMAN: Do you intend to bring
25 in the union to verify this?

1 MR. KATZ: Well, I have the employer's
2 testimony and depending on how the case goes, we will
3 then evaluate it.

4 There is another factor here. I will re-
5 serve this because it gets involved with the question
6 of seniority basis, and I think it just encumbers the
7 record.

8 JUDGE FRIEDMAN: All I want is the basic
9 theory of the charge.

10 MR. KATZ: Of course, we always make the
11 point in this one employee situation in the context which
12 appears in this case, and I have read the Board cases,
13 and I am an active practitioner and do nothing but labor
14 work, been doing it now for close to 39 years, and I
15 pride myself that I have read practically every Board
16 case.

17 I read the law services when they come out
18 on Monday of each week.

19 In fact, I have a case in this week's issue
20 that when we get involved in the law, I will argue it.

21 I know the Board cases of concerted activi-
22 ty where what an employee does spills over, so to speak,
23 on other employees, and that might be concerted activity.
24 But in the context of this case--

25 JUDGE FRIEDMAN: I think it is New York Tra

1 Rock or something like that case right here.

2 MR. KATZ: I don't remember offhand the
3 names of the cases. This is not, this does not measure
4 up to the concerted activity, which is a violation of
5 8(a)(1) by reason of Section 7 of the Act, but in any
6 event--

7 JUDGE FRIEDMAN: As a matter of fact, we
8 have--

9 MR. KATZ: In any event, I submit, and I
10 would like to make a statement now, that with respect
11 to the 8(a)(3) allegation, based on the Interborough
12 case where there were several employees of concerted ac-
13 tivities, the Board found in agreement with the Trial
14 Examiner that there was no 8(a)(3).

15 This is not a case of which encourages
16 or discriminates because of union membership or activity.

17 I appreciate that the net effect, a viola-
18 tion of 8(a)(1), and the remedy insofar may be the same
19 as an 8(3), but it is clearly a different situation with
20 respect to the kind of posting of the notice and what an
21 employer has to cease and disist from doing if there is
22 in fact a violation.

23 JUDGE FRIEDMAN: You will agree, however,
24 that there is a theory and the Board has accepted it
25 time and again, if single employees cease to enforce

1 a portion of the bargaining agreement between the em-
2 ployer and the employee, that is a protected activity.

3 MR. KATZ: Well, I would say this--

4 JUDGE FRIEDMAN: As a general proposition
5 there may be exceptions depending on the facts.

6 MR. KATZ: An 8(a), but not an 8(a)(3).

7 JUDGE FRIEDMAN: If it would be an 8(3)
8 type of remedy.

9 MR. KATZ: We know it is not an 8(3) and
10 the Board dismisses that aspect of it.

11 MS. KINNEY: I have a number of cases
12 on that point.

13 JUDGE FRIEDMAN: I think I am pretty
14 familiar with the line of cases.

15 What I'm trying to figure out here is
16 how we can shorten this proceeding, and that is why
17 I am asking these questions, not because I am trying
18 to throw anybody off or make a predecision on the case
19 in any sense.

20 MS. KINNEY: Your Honor, with respect to
21 this--

22 JUDGE FRIEDMAN: Can we stipulate to
23 this effect--off the record.

24 (Discussion off the record.)

25 JUDGE FRIEDMAN: On the record.

1 Ms. Kinney, you may proceed.

2 MR. KATZ: Are you ready to call a witness?

3 MS. KINNEY: I want to do the stipulation
4 on--

5 MR. KATZ: Before you call a witness I
6 have some motions to make.

7 JUDGE FRIEDMAN: All right, Mr. Katz, I
8 will hear that.

9 MR. KATZ: Before she marks the other
10 documents in evidence.

11 JUDGE FRIEDMAN: Well, what are these
12 other--

13 MS. KINNEY: We had made an agreement to
14 stipulate with respect to the collective bargaining
15 agreement between Respondent and the Union.

16 MR. KATZ: No problem, no objection.

17 MS. KINNEY: I would like to mark for
18 identification as General Counsel Exhibit 2--

19 JUDGE FRIEDMAN: That is the collective
20 bargaining agreement?

21 MS. KINNEY: Yes.

22 JUDGE FRIEDMAN: This is the one that was
23 in effect at the time this occurred?

24 MS. KINNEY: Yes.

25 JUDGE FRIEDMAN: We will receive that since

1 there is no objection, as G. C. 2 in evidence.

2 (Copy of contract referred to received in
3 evidence as General Counsel's Exhibit No. 2, as of this
4 date.)

5 JUDGE FRIEDMAN: All right. Is that the
6 only stipulation you have?

7 MS. KINNEY: Right.

8 JUDGE FRIEDMAN: Then I will hear your
9 motions now, Mr. Katz, whatever they may be.

10 MR. KATZ: The first motion I make is
11 I respectfully ask Your Honor to direct counsel for the
12 General Counsel, pursuant to the provisions of the Free-
13 dom of Information Act, 5 U.S.C. Section 552, as amended
14 by Public Law 93-502, to make available at the opening
15 of this hearing the affidavits of the 8(a)(3) and any
16 other witnesses she intends to call in support of the
17 allegations of the complaint.

18 I might say that I wrote a letter dated
19 January 27th, the day I was retained in this case, in
20 this year, to Mr. Kainard, Regional Director, and this
21 morning I received in the mail a letter which I think
22 is the form letter which the regional offices use, in
23 which he has indicated that it is being denied because
24 in his opinion, based on what the Board opinion is, a
25 Respondent is not entitled to those statements.

1 JUDGE FRIEDMAN: You are entitled to them,
2 of course.

3 MR. KATZ: That is the second motion.
4 This is on the Freedom of Information Act.
5 The other part, under the so-called Jencks
6 Rule and what application it has, is another motion I
7 am going to make.

8 JUDGE FRIEDMAN: What do you say to the
9 first motion?

10 MS. KINNEY: Your Honor, I would say
11 that General Counsel opposes the motion on the ground
12 that the Board rules and regulations do not provide for
13 the production of such statements at this time, and fur-
14 ther, prohibit their production by the General Counsel
15 at this time.

16 JUDGE FRIEDMAN: I think that Ms. Kinney
17 is correct as of the Board rules.

18 I have read the case that the Court of
19 Appeals has handed down recently, and whether or not
20 there is going to be a versal of that in the near future,
21 Mr. Katz, I can't say. But as of today, I have got to
22 rule against you on that.

23 MR. KATZ: I am here to protect my cli-
24 ent's interests. I appreciate and understand.

25 The next motion I want to make--

1 JUDGE FRIEDMAN: I can assure you if
2 it would expedite matters, I would love to give it to
3 you, but I just can't.

4 MR. KATZ: It always seems strange to me
5 as a practitioner before this Board that an Administra-
6 tive Law Judge who has the duty and responsibility of
7 deciding a case, especially when, for what counsel for
8 the General Counse indicates, one problem here may be
9 a question of credibility, in effect does not have the
10 discretion and is bound by the Board's rules and regula-
11 tions and what the Board does, and since I am familiar
12 with administrative law and familiar with the Board
13 statements, I think it is wrong.

14 I recently had the Star case; Ms. Kinney
15 and I were opposing counsel on that.

16 I was able to get the Second Circuit even
17 though I lost the case, to rule that the Administrative
18 Law Judge, despite the Board's rules and regulations,
19 must have discretion on the sequestration problem where
20 there are issues of credibility, because you cannot in
21 fairness give a fair trial to a Respondent.

22 JUDGE FRIEDMAN: Sequestration is one
23 thing; this is something else.

24 MR. KATZ: I am talking about the theory.

25 The next motion I want to make, if Your

1 Honor please, is that I move at this time that counsel
2 for the General Counsel, at the commencement of this
3 trial, make available to me copies of affidavits and
4 statements of witnesses, including the 8(a)(3) that she
5 intends to call.

6 Now, I want to say I am cognizant of the
7 Board's rules and regulations, but it seems to me grossly
8 unfair and a complete denial of due process to have to
9 wait until Mr. Stallworth takes the stand and testifies
10 because they are going to put him on; she has already
11 said that.

12 I then have in a few minutes to rush through
13 his statement when counsel for the General Counsel has
14 had the statements for months in preparation of trial.

15 The trial of the case is not a gain, it is
16 an attempt to find the truth and to so-called tie the
17 hands of the Respondent by rules which said that you
18 have to wait for the formality of a witness to testify,
19 whom we know we going to testify, is unfair, to say the
20 least.

21 JUDGE FRIEDMAN: All right.

22 Ms. Kinney?

23 MS. KINNEY: Your Honor, I would again
24 oppose the motion on the grounds that the Board rules and
25 regulations, I think it is Section 102.118, prohibit the

1 production of statements at this point in the juncture
2 of the hearing.

3 JUDGE FRIEDMAN: Yes, the motion is denied

4 Again, of course, I don't have to tell you
5 you are entitled to the affidavits as soon as the wit-
6 ness finishes testifying, and I understand your feelings
7 on it, but those are the Board rules and I operate under
8 the Board rules.

9 Go ahead.

10 MS. KINNEY: Your Honor, I guess I would
11 like to say one thing with respect to the answer, the
12 amended answer.

13 It is my understanding that the union de-
14 clined to take the case to arbitration so I am not sure
15 of the function of defense in this juncture.

16 MR. KATZ: Does counsel for the General
17 Counsel intend to offer evidence from somebody from the
18 Union to that effect? I would be very much interested
19 in it.

20 MS. KINNEY: No, I have no evidence. I
21 was just prompted by one of the--

22 JUDGE FRIEDMAN: We can take testimony
23 of a witness to that effect and it becomes a matter of
24 credibility and we will see.

25 I don't know whether contract interpreta-

1 tion is even necessary. That is something else we will
2 have to decide if, as and when we get to that point.

3 I would like to proceed as quickly as
4 possible.

5 MS. KINNEY: Mr. Stallworth, step up to
6 the stand, please.

7 Whereupon,

8 JOHN W. STALLWORTH

9 called as a witness, having been first duly sworn by
10 Judge Friedman, was examined and testified as follows:

11 JUDGE FRIEDMAN: Please be seated, sir.

12 Give your name and address to the reporter.

13 THE WITNESS: John Wesley Stallworth. I
14 reside at 969 Gates Avenue, Apartment No. 204, Brooklyn,
15 New York.

16 JUDGE FRIEDMAN: Off the record.

17 (Discussion off the record.

18 JUDGE FRIEDMAN: On the record.

19 You may proceed with your questioning.

20 DIRECT EXAMINATION

21 BY MS. KINNEY:

22 Q Did you formerly work for Columbia Corru-
23 gated Container?

24 A Yes.

25 Q Will you tell us when?

1 A Three times really, but last time was
2 10 January, '71.

3 Q When was the first time you started work-
4 ing there?

5 A About '65.

6 Q Then what happened?

7 A I was drafted into Service during one
8 layoff, I believe, or whatever, and I was in Service
9 and then I went back.

10 Q Then what happened?

11 A One Saturday, myself with two other gentle-
12 men were going to work and I was deprived of my trans-
13 portation at that time.

14 Q Did you continue to work for Columbia?

15 A I got another job and later on I started
16 again.

17 Q When did you start again?

18 A The last time was January, '71, I believe.

19 Q What was your position?

20 A Head setter.

21 Q Will you describe what you did?

22 A The machines are set up with shelves and
23 some with rollers to print, cut, score and die, so the
24 boxes will fold properly with the groove, so they will
25 fold in a certain position.

1 Q What was your rate of pay?

2 A \$194.40 per week, 40 hours.

3 Q What were your hours?

4 A From 7:30 to 4:00.

5 Q Who was your supervisor working days?

6 A Ed McLeod.

7 Q Are the employees of Columbia represented
8 by a labor organization?

9 A Local 381.

10 Q Does Columbia have a year-end shutdown?

11 A Semi-annually, twice a year.

12 Q When are they?

13 A One like during the summer months, July,
14 and one December, a month in the winter.

15 Q In the fall of 1974, did you get any kind
16 of notification about a shutdown?

17 A Yes, I did. It was over the plant maybe
18 before December. They informed everybody it will be
19 shut down from the 20th of December to the 6th of
20 January the following year.

21 MS. KINNEY: May I have this marked,
22 please, for identification, as General Counsel's Exhibit
23 3?

24 (Document marked General Counsel's Exhibit
25 No. 3 for identification, as of this date.)

1 Q I am showing you General Counsel's Exhibit
2 3 for identification and ask you if you recognize this.

3 A I do.

4 Q Will you tell us what it is?

5 A It is the brochure informing us at this
6 time the place will be closed for the two weeks.

7 Q Do you remember when you got that?

8 A Like in October. They have it dated here
9 October, but it was roughly a month before the regular
10 shutdown.

11 MR. KATZ: I have no objection to offer-
12 ing it in evidence.

13 MS. KINNEY: All right. I will just show
14 it to you.

15 JUDGE FRIEDMAN: Received.

16 (General Counsel's Exhibit 3 for identifi-
17 cation received in evidence, as of this date.)

18 Q After you received that notification what
19 happened next?

20 A This didn't bother me because I had been
21 there for a period of almost three years.

22 MR. KATZ: I move to strike the answer
23 as not responsive.

24 JUDGE FRIEDMAN: Yes, sustained. Strike
25 it.

1 What happened?

2 Q What happened after that?

3 A Nothing happened. Continued to work.

4 MS. KINNEY: I would like to get this
5 marked as General Counsel Exhibit 4 for identification.

6 MR. KATZ: Can we go off the record a
7 moment?

8 JUDGE FRIEDMAN: Off the record.

9 (Discussion off the record.)

10 JUDGE FRIEDMAN: On the record.

11 General Counsel Exhibit 4 is received by
12 stipulation.

13 (General Counsel's Exhibit 4 for identifi-
14 cation, received in evidence, as of this date.)

15 Q This is General Counsel's Exhibit 4 in
16 evidence. I ask you if you remember seeing that before?

17 A I do.

18 Q Will you tell us about the circumstances?

19 A This is a copy of waiving rights that I
20 received on about the 11th of December, '74, that I
21 refused to sign.

22 Q Who gave it to you?

23 A First Ed McLeod brings it around, tells
24 me to read it carefully, sign it and give it back to him.

25 Q Then what happened?

1 A I read it, I put it in my coat pocket.
2 Came back later, and he asked me what happened.

3 I told him I do not have it, put it on
4 the floor.

5 Q Who was Ed McLeod?

6 A Assistant supervisor of the plant.

7 Q Then what happened?

8 A He leaves later on than Mr. Serwitz, the
9 president.

10 JUDGE FRIEDMAN: I'm sorry, you will have
11 to speak a little more slowly, sir. I didn't get that
12 at all.

13 After she asked what happened, then will
14 you repeat it, please?

15 A (continuing) After McLeod spoke to me
16 asking me what happened to the paper, I told him that
17 I didn't have it, even though I did.

18 So he leaves. I guess evidently he must
19 have spoken with Mr. Serwitz.

20 MR. KATZ: I move to strike what he guesses.

21 A (continuing) Then he comes back.

22 JUDGE FRIEDMAN: I will strike, "I guess."

23 A (continuing) Later on Mr. Serwitz come
24 and ask me about the same document, the paper.

25 Q What did he say to you?

1 A "Where is the paper? Why didn't" I sign it.

2 Q What did you say?

3 A I tell him I see no reason to sign it
4 for a layoff.

5 Q Did he say anything further to you?

6 A If I don't sign the paper, he wouldn't know
7 what to do. Everybody signed it except me.

8 Q Then what did you say, if anything?

9 A I told him I wasn't signing for a layoff.
10 JUDGE FRIEDMAN: What? You wouldn't sign
11 what?

12 THE WITNESS: I would not sign this waiv-
13 ing rights, signing for a layoff.

14 Q Then what happened?

15 A I believe this was on a Thursday and like
16 that Friday he brings me my pay with the layoff slip,
17 which was the 13th of December. That is the last day
18 I worked at that company.

19 MS. KINNEY: I would like to get this
20 marked for identification as G. C. Exhibit 5.

21 (Document marked General Counsel's Exhibit
22 No. 5 for identification, as of this date.)

23 Q This is General Counsel's Exhibit 5, Mr.
24 Stallworth.

25 JUDGE FRIEDMAN: This is no layoff slip.

1 Do you recognize this?

2 THE WITNESS: I do.

3 JUDGE FRIEDMAN: Wait a minute. I'm
4 sorry, he is identifying it now.

5 Q Will you tell us when you received this?

6 A 13th of December, with my wages from
7 Columbia.

8 Q Who gave it to you?

9 A Ed McLeod.

10 Q Did you know--

11 MR. KATZ: May I have a recess for ten
12 seconds without leaving the room? We might stipulate.

13 JUDGE FRIEDMAN: Surely. Off the record.

14 (Discussion off the rec ord.)

15 JUDGE FRIEDMAN: On the record.

16 MR. KATZ: Respondent stipulates that
17 the original of G. C. No. 5 was given to this witness.

18 JUDGE FRIEDMAN: On December 13th?

19 MR. KATZ: On December 13th.

20 JUDGE FRIEDMAN: Of '74?

21 MR. KATZ: Of '74.

22 JUDGE FRIEDMAN: It is received in
23 evidence.

24 (General Counsel's Exhibit No. 5 for iden-
25 tification received in evidence, as of this date.)

1 JUDGE FRIEDMAN: For the purposes of clari-
2 fication, not having practiced law in New York State for
3 some twenty-three years, this is a normal form given to
4 employees when they are laid off or discharged?

5 MR. KATZ: It is normal in this plant
6 because it expedites their processing of the claims for
7 unemployment insurance.

8 JUDGE FRIEDMAN: It is not an official form
9 issued by the State? It is a form that this plant uses?

10 MR. KATZ: It is an official form. If you
11 look at the extreme left-hand side, it is an official
12 form, so by giving him his Social Security Number and the
13 employer's identification number, it helps to process any
14 application made for unemployment insurance benefits.

15 JUDGE FRIEDMAN: I see. But it is used
16 instead of a slip saying, "You are unemployed"? Can you
17 stipulate to that?

18 You are laid off, is that it?

19 MR. KATZ: This is a form where we have
20 a layoff we give it to the people.

21 JUDGE FRIEDMAN: I see. Thank you.

22 BY MS. KINNEY:

23 Q You said you received your check and this
24 form. Did you receive anything else, do you recall, that
25 day?

1 A No, it was this form for the layoff with
2 one week's wages, one that they hold back one week and
3 one week's vacation; three checks with this form.

4 Q What did this form mean when you received
5 it, to you?

6 A That I should go and apply for unemploy-
7 ment benefits.

8 Q What happened after that?

9 A The following Monday I did go and apply
10 for unemployment insurance, and for a period of time I
11 think I received one check.

12 Then Mr. Serwitz tells the unemployment
13 that I quit my job, but I did receive a letter that said
14 he assumed I quit, on or about the 8th of January.

15 MS. KINNEY: Would you please mark this
16 as General Counsel's Exhibit 6?

17 (Document marked General Counsel's Ex-
18 hibit No. 6 for identification, as of this date.)

19 MR. KATZ: Respondent has no object to
20 the receipt in evidence.

21 JUDGE FRIEDMAN: All right.

22 MR. KATZ: I might point out that although
23 we have no objection to its receipt in evidence, a look
24 at the paper itself indicates that there are some errors
25 which I will correct when Mr. Serwitz testifies.

1 For example, the letter is dated January 8,
2 1974. It should be '75.

3 Then it says a period of 72 hours. It
4 should be 48.

5 But this will come out in his testimony.

6 JUDGE FRIEDMAN: That is all right.

7 MR. KATZ: I don't think it affects the
8 other part of it.

9 JUDGE FRIEDMAN: It is received.

10 (General Counsel's Exhibit 6 for identifi-
11 cation received in evidence, as of this date.)

12 BY MS. KINNEY:

13 Q Is this a copy of a letter you just men-
14 tioned you received?

15 A This is.

16 Q What happened after that?

17 A I talked with him. I talked with the
18 union also.

19 MR. KATZ: Could we have some times fixed?

20 JUDGE FRIEDMAN: Yes, if we can fix a
21 time.

22 Q Approximately when did you go to speak--

23 A After I received the letter he assumed
24 that I quit, I go to see about the job.

25 They tell me he was in Florida on business.

1 MR. KATZ: Before we get to that,
2 how long a period?

3 Q About how long after you received the let-
4 ter did you go out to the company?

5 A During that week.

6 Q The same week?

7 A During the January week when he assumed
8 that I quit.

9 Q When you got to the company what happened?

10 A He wasn't around that I could talk with,
11 and they weren't really calling him back, to my knowledge.

12 I spoke with some of the co-workers and
13 they still wasn't calling anybody back to work.

14 Q Had you been told anything about reporting
15 for work?

16 A No.

17 Q What happened after that?

18 A A couple of months, I guess, I would say,
19 passed by and the co-workers tell me that they are called
20 back to work now, I should come and see about my job.

21 I did so.

22 MR. KATZ: Could we have a time fixed,
23 a month or--

24 JUDGE FRIEDMAN: Yes. I think the Re-
25 spondent has a right to know. He has to meet these

1 allegations.

2 Q Can you give me an approximate idea how
3 much time passed from the time you received that letter
4 to when you got the call, or perhaps did you have a
5 hearing with your unemployment?

6 MR. KATZ: I object to this. This is
7 crucial. I object to the leading.

8 MS. KINNEY: I am trying to have the time
9 fixed. I am thinking maybe we can do it in terms of
10 that date.

11 Q See if you can remember, to the best of
12 your recollection, when you went back.

13 A Did I have a hearing with the unemployment?

14 Q No. See if you can remember when you went
15 back out to the company. I believe you testified you
16 heard the men were going back.

17 MR. KATZ: He said the co-workers told
18 him the men were called back.

19 Q Do you remember when that was?

20 A The month of February, I would say.

21 JUDGE FRIEDMAN: Do you remember when
22 in February?

23 THE WITNESS: Precise date, no.

24 JUDGE FRIEDMAN: Was it the first week,
25 second, third, fourth week?

1 THE WITNESS: Roughly, the middle of
2 February, I would say.

3 JUDGE FRIEDMAN: Roughly, the middle of
4 February?

5 THE WITNESS: Yes.

6 Q What happened when you went there?

7 A I wasn't employed back.

8 Q Did you speak to anyone when you went there?

9 A I went once and I spoke with--

10 MR. KATZ: Can we have this time fixed
11 or is it also in the middle of February?

12 A (continuing) This was like February.
13 One co-worker, Allen Travis, did bring me word that Mr.
14 McLeod said come to work, the assistant plant supervisor.

15 MR. KATZ: I am trying to get a time.

16 A (continuing) February. I goes to work
17 and Mr. McLeod tells me that he made a mistake, he didn't
18 intend to send for me, he made a mistake.

19 Q Then what happened?

20 A No work, so I goes back home.

21 Q Then what happened then?

22 A I had to go to Hicksville to the unemploy-
23 ment hearing to start my unemployment which Mr. Serwitz
24 I don't believe showed up or nobody to represent him.
25 That decision I won.

1 MS. KINNEY: This I would like to get
2 marked for identification as General Counsel's Exhibit 7.

3 (Document marked General Counsel's Exhibit
4 No. 7 for identification, as of this date.)

5 MS. KINNEY: I would like to request
6 honor to take judicial notice of the decision of
7 New York State Department of Labor in Mr. Stallworth's
8 case.

9 JUDGE FRIEDMAN: Are you offering?

10 MS. KINNEY: Yes, I will offer it in
11 evidence.

12 JUDGE FRIEDMAN: I can't take judicial
13 notice of it unless you offer it.

14 MR. KATZ: Respondent objects to its
15 receipt in evidence.

16 In the first place, a decision of the
17 Unemployment Insurance is not binding or material or
18 relevant to the issues of this unfair labor practice case.

19 Additionally, as this witness testified,
20 this appears from the first sentence of the decision
21 that no one from the company appeared. Therefore, I
22 submit, it is not either res. judicata or binding on this
23 employer.

24 MS. KINNEY: Your Honor, I would--

25 MR. KATZ: What I am saying, sir, is simply

1 this:

2 I don't have the cases, but if necessary,
3 in brief, we can supply them.

4 Generally, the converse is true, where
5 an unemployment insurance referee finds that the em-
6 ployee has been discharged for cause or misconduct, he
7 is not entitled to unemployment insurance.

8 This court has ruled many times that that
9 is not binding and is not relevant to the issues in an
10 unfair labor practice case.

11 JUDGE FRIEDMAN: The Board has also held
12 it is not error to receive it, and I am going to take it.

13 Received.

14 (General Counsel's Exhibit No. 7 for
15 identification received in evidence, as of this date.)

16 BY MS. KINNEY:

17 Q What happened after that?

18 A Later I was told again to go back to work.
19 I goes out--

20 MR. KATZ: Can we have a time and who told
21 him?

22 JUDGE FRIEDMAN: I will also specifically
23 note that the Respondent in this case did not appear
24 at the proceeding.

25 Go ahead.

1 A (continuing) I would say roughly in March
2 I did go back to work. I spoke to Mr. Serwitz.

3 I told him that I don't see a punch card
4 for me to punch in to go to work.

5 He tells me that I gave him a hard time
6 before I left, I didn't sign the forms. As far as he is
7 concerned, I no longer work for the company any more.

8 In returning I writes the letter to the
9 union. I got no response from them, and I was never re-
10 called back at Columbia.

11 MS. KINNEY: No further questions.

12 JUDGE FRIEDMAN: Mr. Katz?

13 MS. KINNEY: Excuse me. I have one.

14 BY MS. KINNEY:

15 Q Had you ever been laid off before at
16 Columbia?

17 A The last time that I started from 7:00 to
18 1:00, no.

19 JUDGE FRIEDMAN: In order to save time,
20 I am going to make this ruling. That after each wit-
21 ness testifies, without Mr. Katz having to go through
22 the formality of asking for the affidavit, that you can
23 give it to him.

24 MS. KINNEY: Sure.

25 MR. KATZ: Do you have a typewritten copy,

1 of this?

2 MS. KINNEY: No.

3 MR. KATZ: You don't?

4 MS. KINNEY: No.

5 Can we go off the record?

6 JUDGE FRIEDMAN: Off the record.

7 (Discussion off the record.)

8 JUDGE FRIEDMAN: On the record.

9 CROSS-EXAMINATION

10 BY MR. KATZ:

11 Q Mr. Stallworth, you testified that the
12 last time that you came back to work was in 1971. It
13 is not '72, isn't that right?

14 A I was just thinking that is correct.

15 Q You talked about layoffs occurring Decem-
16 ber, 1974. You mean the plant was shutting down start-
17 ing December 22nd for two weeks and that is the layoff
18 you are talking about?

19 MS. KINNEY: Objection. He is character-
20 izing testimony other than the witness testified.

21 MR. KATZ: I will withdraw it and re-
22 phrase it.

23 Q Were there layoffs at the end of the work-
24 day, December 20th, or commencing the work week of De-
25 cember 22nd, 1974?

1 A No, it is year-end shutdown, not layoff.

2 Q You testified after you received the Jan-
3 uary 8, 1975 letter, which is General Counsel Exhibit
4 No. 6, you came in to speak to Mr. Serwitz but you were
5 told he was in Florida.

6 A Yes. I did not see him at all that day.

7 Q I ask you whether you said before that you
8 were told that he was in Florida.

9 A That is correct.

10 Q Are you sure you were told that?

11 A I was told that he was in Florida.

12 Q You saw him when, the next day?

13 A No.

14 Q How many days after this incident do
15 you say you spoke to Mr. Serwitz?

16 A February, I would say, that I did get a
17 chance to talk with him.

18 Q If I told you that Mr. Serwitz said that
19 he wasn't in Florida in January, does that help you re-
20 fresh your recollection as to whether it is true that
21 you were told he was in Florida in January?

22 A When I went to talk with Mr. Serwitz I
23 did not go into the office. I went inside the plant
24 itself and I was told that he was not around, he was
25 in Florida.

1 Q Who told you this, that he was not around
2 that he was in Florida?

3 A McLeod and some of the co-workers.

4 Q Let me take you back to December 11, 1974,
5 when you were given General Counsel Exhibit No. 4.

6 You said that Mr. McLeod, among other things,
7 asked you to read it carefully. Did he come back to you
8 that same day?

9 A He did.

10 Q And I think you testified you put it in
11 your pocket?

12 A That's correct.

3 13 Q Did you do anything else in connection
14 with that letter that day?

15 A The day that I received the letter I asked
16 the shop steward about why should I sign for a layoff?

17 In returns he called the union.

18 Q Which shop steward are you talking about?

19 A Murray Plotkin, the day shop steward I'm
20 not sure how the name is spelled.

21 Q So then you spoke to the shop steward
22 about that letter?

23 A That is correct.

24 Q You didn't tell us this when Ms. Kinney
25 was questioning you, did you?

1 A No, I didn't mention it.

2 Q And you told the shop steward that you
3 didn't want to sign it, right?

4 A I told him that I wasn't going to sign it.

5 Q He told you that he would call the union;
6 is that right?

7 A That is correct.

8 Q Then he came back and told you that the
9 union said that everybody but yourself wanted to sign
10 it, right?

11 A No.

12 Q What did he tell you?

13 A The shop steward told me that he spoke with the
14 union, those that wanted to sign the letter, it is all
15 right. The ones that don't want to sign it don't
16 have to. It doesn't make any difference.

17 Q That was all that he said to you?

18 A As far as that document, yes.

19 Q Now then, there came a time when Mr. McLeod
20 asked you about the letter again?

21 A Yes.

22 Q It was on the same day that you had this
23 conversation with the union steward; am I right?

24 A That is correct.

25 Q What did you tell him? That is, Mr. McLeod,
the second time? He came over to you and asked you for

1 the letter, didn't he?

2 A Yes.

3 Q What did you say to him?

4 A I told him that I didn't have it.

5 Q Did you tell him you threw the letter out?

6 A I don't have it. I disposed of it somehow.

7 Q Did you tell him that you threw the letter
8 out?

9 A That is correct.

10 Q Did he ask you why did you do that?

11 A He did.

12 Q What did you say, if anything?

13 A I was not signing for it, for the layoff.

14 Q I'm sorry. I didn't hear the answer.

15 A I told Mr. McLeod that I was not signing
16 for a layoff.

17 MR. KATZ: Would you repeat that answer?

18 (The reporter read the last answer.)

19 Q Mr. McLeod made no response and walked
20 away; isn't that true?

21 A True.

22 Q How much later that day do you say that
23 Mr. Serwitz spoke to you?

24 A At the time that Mr. McLeod and I talked,
25 I'm not sure about this time, but it was near four o'clock;

1 knocking off time.

2 Q About how long did this conversation take
3 that you had with Mr. Charles Serwitz?

4 A About ten, approximately fifteen minutes.

5 Q As much as ten or fifteen minutes?

6 Isn't it more accurate to say it took
7 between two and four minutes, your talk with Mr. Serwitz
8 about that letter?

9 A No.

10 Q Did you come over to where he was or did
11 he approach you?

12 A He approached me.

13 Q What did he say to you?

14 A "John, where is the letter? Why don't
15 you sign it?"

16 I tell him that I'm not signing.

17 He said that I'm the only one that didn't
18 sign. He knows what to do if I don't sign.

19 He could work me a day or work me two or
20 three days and lay me off. He could work me again and
21 lay me off.

22 I said, "Regardless of how you do it, I'm
23 still not signing for a layoff."

24 Q Didn't Mr. Swerwitz in this conversation
25 tell you that under the share-work arrangement you would

1 have to be laid off December 13th, the end of that week,
2 and then you would have to rotate with the other men
3 in that group of people?

4 A No.

5 Q You shake your head it is not?

6 A No.

7 Q Are you telling us, sir, that he didn't
8 discuss with you the rotation of the work-sharing?

9 A No. If I don't sign, he don't know whether
10 he would share the work with me or not. He knows not
11 what to do. He doesn't know what to do if I didn't sign
12 it.

13 He could work me in a sense that I would
14 have to sign two or three days a week, or work two days
15 and be off for three. He could do it. He didn't say
16 he would have to.

17 Q He said you could work some days but he
18 didn't have to do it?

19 A He could do me this way. He didn't say
20 that I had to sign or he would work his business this
21 way, no.

22 Q Didn't he tell you that the purpose of the
23 layoff was because of economic conditions at the plant,
24 they had to do something about it?

25 A That is why I was being laid off.

1 Q That is why a lot of other people were
2 being laid off; is that right?

3 A I would say so.

4 Q Didn't he tell you that those people with
5 less than one year of seniority had already been laid
6 off?

7 A This I knew.

8 Q Didn't he tell you you were then in a group
9 of around twenty-five people that were next in order
10 based on seniority for layoffs?

11 A He did tell me I was being laid off.

12 Q Didn't he tell you that everybody but
13 yourself had discussed this with the shop steward?

14 And prefer to be laid off that week in-
15 stead of having to come back the week of January 6th
16 and then get a layoff so that they could file immediately
17 for unemployment insurance?

18 A No, no.

19 Q He didn't say this?

20 Did he say anything to you about all the
21 other people but yourself wanted to be laid off that
22 week, the end of that week, December 13, 1974?

23 A He didn't tell me anybody wants to be laid
24 off.

25 Q But you knew that everybody but yourself

1 wanted to be laid off the end of December instead of
2 sharing the week?

3 I'm sorry--than having the plant closed
4 for a couple of weeks and then coming back on January 6th
5 of '75? You knew that, didn't you?

6 A The layoff was not done according to senior-
7 ity.

8 Q The layoff of the twenty-five men was not
9 done according to seniority you are telling us?

10 A As far as my department, no.

11 Q Did you say anything to Mr. Serwitz at
12 that time that you didn't think that the layoffs in your
13 department were not being done according to seniority?

14 A I don't remember. I don't remember. Yes,
15 and then--

16 Q What?

17 A Yes, I do remember.

18 Q You do remember what?

19 A Telling him that layoff was not done accord-
20 ing to seniority.

21 Q Did you tell it to the Labor Board when
22 you were interviewed?

23 A In returns he tell me about different
24 positions that have to be done in a sense his way.

25 Q Do you remember being interviewed in June

1 of 1975 by a representative of the Labor Board in con-
2 nection with the charges you filed in this case?

3 A Excuse me?

4 MR. KATZ: Repeat the question to him,
5 please.

6 (The reporter read the last question.)

7 A Yes.

8 Q Did you tell this person what you are now
9 telling us about what you told Mr. Serwitz, that the
10 layoffs were not being done according to seniority?

11 A Did I tell that person?

12 Q Yes.

13 A Yes.

14 Q He wrote it down and you signed a statement?

15 A I sign a statement. I couldn't say that
16 he wrote it down.

17 Q Well, sir, would you look at the statement
18 and point out anywhere in that statement wherein there
19 is any reference to the statement that you told the in-
20 vestigator at that time that you told Mr. Serwitz that
21 the men were not being laid off according to seniority,
22 sir?

23 The fact that I have opened it to a par-
24 ticular page I don't intend--you can look at the whole
25 thing. I only did it because I think that is the time

1 that you are talking about.

2 A This I can't really read.

3 Q Pardon me, sir?

4 A This I can't really read

5 Q You can't read it?

6 JUDGE FRIEDMAN: You can't read it because
7 of the handwriting; is that it?

8 THE WITNESS: The handwriting is not very
9 clear.

10 Q Well, did you read it before you signed
11 that statement, sir?

12 A It was supposed to have been read to me.

13 Q Well, was it read or was it not read?

14 A It was read to me.

15 MR. KATZ: May we at this point--

16 JUDGE FRIEDMAN: Why don't you do this?
17 Rather than have--I was going to say maybe we can stip-
18 ulate between you that it isn't contained in the af-
19 fidavit.

20 MR. KATZ: I would be glad to do it.

21 JUDGE FRIEDMAN: Are you familiar enough
22 with the affidavit to make that stipulation?

23 MS. KINNEY: I think I could stipulate
24 to that.

25 JUDGE FRIEDMAN: You can?

1 MS. KINNEY: I think I can. Just let me
2 look at it.

3 JUDGE FRIEDMAN: We will save some time
4 then.

5 There is nothing contained in that affi-
6 davit to the effect that he told Mr. Serwitz that the
7 men were not being laid off in accordance with the
8 seniority provisions of the collective bargaining
9 agreement.

10 MS. KINNEY: I'm sorry. Would you read
11 back what he said?

12 (The reporter read back the last statement of the Judge.)

13 MS. KINNEY: Yes, I could stipulate to
14 that.

15 JUDGE FRIEDMAN: All right, then.

16 BY MR. KATZ:

17 Q Did Mr. Serwitz say to you in that con-
18 versation that you would be better off by taking the
19 layoff, you could get unemployment insurance faster
20 than having to be out of work until January the 6, 1975,
21 and coming in for one week and then be laid off?

22 A Repeat the question.

23 MR. KATZ: Read it back, please.

24 (The reporter read the last question.)

25 A He did tell me this but he never called

1 me back to work the 6th or whatever.

2 MRL KATZ: May I, sir, at this time move
3 to strike the last part as not responsive?

4 JUDGE FRIEDMAN: Strike everything but
5 that "he did tell me this."

6 Q In other words, Mr. Serwitz was trying to
7 tell you that it would be to your advantage to take a
8 layoff that week, isn't that right?

9 A I was laid off that week.

10 Q He was trying to tell you it would be to
11 your advantage, is that right?

12 A I would say so.

13 Q Didn't you specifically say you don't want
14 to waive your contract rights?

15 A I did say this.

16 Q Let me show you your statement, sir, and
17 point out wherein in your affidavit you say now just
18 contrary to what you said: "I did not specifically
19 complain about waiving contract rights."

20 Now, which is it, sir?

21 A I refusing to sign this affidavit waiving
22 rights and I did not sign it. Whether it is to my ad-
23 vantage to take a week before everybody else and be off
24 three weeks, which is much less, whether it is to my
25 advantage or not, I refuse to sign.

1 Q Did that end the conversation between y our-
2 self and Mr. Serwitz?

3 A As far as signing, I refused to sign and
4 I did not sign.

5 JUDGE FRIEDMAN: Yes, but was there any
6 further conversation between you after that at that time?

7 THE WITNESS: I stated before that if I
8 didn't sign he wouldn't know what to do. I'm the only
9 one that didn't sign this thing.

10 Q Was that the end of the conversation at
11 that time?

12 A I'm not sure if that is the end or not.

13 Q Then whatever was the end of the conversa-
14 tion, he walked away?

15 A After I refused to sign, he did leave.

16 Q I want to show you your affidavit, sir.
17 I want to show you that part of Page 7 where you state
18 that the day after you received the letter, and the letter
19 we are talking about is January 8th, you started saying
20 you went to the company and spoke with Charles Serwitz
21 and you spoke to him in the discount department, and then
22 you said some other things.

23 Would you look at that, sir? Would you
24 hold it, please? Do you see that part that is crossed
25 out there about, oh, ten lines or something?

1 JUDGE FRIEDMAN: There is an "x" over it,
2 that connects over it.

3 Q Before it was crossed out you told the Board
4 agent interviewing you that you had spoken to Mr. Ser-
5 witz and you related the facts that he put on the sheets;
6 is that right?

7 A I did speak with him and he said that as
8 far as he is concerned, I no longer work here. This
9 happened during the time--

10 Q Mr. Stallworth, it may be that I'm not
11 asking you questions correctly. I will rephrase the
12 question. If you don't understand it, just say so and
13 I will try to do my best.

14 On this Page 7 there are statements here
15 that you spoke to Mr. Serwitz in the discount department
16 near the cafeteria and two or three guys were standing
17 there and you say he never told you not to report back
18 to work. Then you crossed it out, right? You crossed--

19 A I crossed out because he did not tell me
20 to report to work.

21 Q But before it was crossed out you told the
22 Board agent what appears here and he wrote it down; is
23 that right?

24 A It is crossed out.

25 Q Before the Board agent--can we get a stipu-

1 lation that the part that was crossed out that he had
2 given to the Board agent who put it--you are shaking your
3 head no; is that your--if your answer is no, all right.

4 MS. KINNEY: If he doesn't remember saying
5 that to the Board agent--

6 MS. KATZ: Are you telling me that the Board
7 agent wrote something down who was not familiar with the
8 facts and then he crossed it out? Is this the conten-
9 tion of the counsel for the General Counsel?

10 MS. KINNEY: I have no idea why it was
11 crossed out.

12 Q Mr. Stallworth, you were asked questions
13 by the Board agent at the time when you made this affi-
14 davit on June 4, 1975?

15 A Yes.

16 Q At that time weren't the facts of what hap-
17 pened in connection with your layoff and the incidents
18 we are talking about, weren't they fresher and clearer in
19 your mind than they are today?

20 A By my thinking I remember a bit more than
21 at the time that I did.

22 Q You remember when a bit more, now or then?

23 A Some things that maybe is crossed out may
24 be not even in this affidavit.

25 Q When Harold Weinrich asked you questions,

1 didn't you tell him that you had spoken on the day after
2 you got the January 8, 1975 letter, that you had spoken
3 to Mr. Serwitz in the discount department near the cafe-
4 teria? Didn't you tell that to the Board agent at that
5 time in June?

6 A I did tell him.

7 Q Didn't you also tell him that two or three
8 other guys were standing there but you don't recall where
9 they were standing?

10 A I'm not giving you a smart answer, but
11 no one have a job to sit down so the guys was supposedly
12 working, they was not there to verify any of the con-
13 versation.

14 Possibly this is why this is crossed out.

15 Q Didn't you at that time in June tell the
16 Board agent when he asked you that, you asked Serwitz
17 how he could figure that "I quit when he gave me a layoff
18 slip and never told me to report back to work," didn't
19 you tell that to the Board agent at the time in June of
20 1975?

21 A I did.

22 Q And then when the affidavit was finished
23 it was read to you; is that right?

24 A Yes.

25 Q You asked the Board agent to cross that

1 out because that was not true; isn't that correct?

2 A I wouldn't say I asked him to.

3 Q Did he himself cross it out because it
4 wasn't true?

5 A This possibly would not be just pertaining
6 as I have said earlier, possibly this is in a different
7 part of this affidavit than it should be, but it was not
8 maybe brought up again.

9 Q Mr. Stallworth, did you ask the Board agent
10 to cross out the information which is crossed out on
11 Page 7 of your affidavit?

12 A I wouldn't say that I asked him to.

13 Q Did you see him cross it out?

14 A I did.

15 Q Are these your initials alongside of the
16 part that is crossed out?

17 A That is.

18 Q Did the Board agent ask you to initial
19 the part that is crossed out?

20 A He did.

21 Q Did he tell you why he wanted you to
22 initial, to place your initials at that point in the
23 affidavit?

24 A No.

25 Q Did you ask him why?

1 A No.

2 Q You testified that there did come a time
3 after the letter of January 8th when you went to the
4 company and you spoke with Mr. Serwitz. Can you tell
5 us as best as you can recall what month it was in 1975?

6 A That was the month of January after I re-
7 ceived the letter he assumed that I quit.

8 Q And you asked him how he figured that you
9 had quit your job; is that right, is that what you are
10 saying?

11 A Yes.

12 Q Didn't he tell you at that time that you
13 should have known to come back to work on January 6, 1975,
14 and because you didn't come back for two days under the
15 48 hour rule, you were deemed to quit your job; didn't
16 he tell you that?

17 A This is what he told me, but with the lay-
18 off slip and no notification to return, this is why I
19 asked him how can he assume that I quit?

20 I only worked prior one week before the
21 year-end shutdown and the layoff slip is proof of layoff.
22 No notification to return to work but he still assumed
23 that I quit a day or so after.

24 I asked him how.

25 Q This business about notification, didn't

1 you also have a conversation with someone from the
2 union about this notification?

3 A Which notification are you referring to?

4 Q This notification about coming back to
5 work in January.

6 A The union delegate asked me was I notified
7 to report back to work on 6th of January. I tells him
8 no.

9 Q Who was the union delegate?

10 A John La Rosa. I'm not sure of the name.

11 Q Did you go to the union or was this on the
12 telephone?

13 A I spoke with him on the telephone. As of
14 yet I have not been to the union hall personally, I have
15 not been there.

16 Q Didn't you talk to the vice president of
17 the union on the telephone shortly after you got this
18 letter?

19 A Telephone conversation, but--

20 Q No, the vice president of the union, not
21 a business agent.

22 A I wouldn't say I spoke with the vice presi-
23 dent. I wrote him a letter.

24 Q When did you write a letter to the union?

-25 A This letter should have been sent 26 March

1 that I sent to the union.

2 Q '75?

3 A Right.

4 And you told them that you had been ad-
5 vised that your employer said you should have come back
6 on January 6th of 1975, right?

7 A He said that I should have.

8 Q And he told it to you, your boss told it
9 to you, too, you testified earlier. You are shaking
10 that he didn't say that to you?

11 A Didn't tell me to return on the 6th, the
12 regular shutdown for two weeks, the 20th of December, '74
13 to the 6th of January, '75.

14 I was laid off for a week before and he
15 did not tell me to return on the 6th. Sent me no notice
16 to return on the 6th of '75.

17 Q I show you General Counsel Exhibit No. 3,
18 this October 22, 1974 letter and call your attention
19 specifically--you can read the whole thing, sir--about
20 the plant reopens on the regular scheduling of shifts
21 on January 6, 1975, after the prior two week shutdown.

22 Do you see that? You got a copy of that,
23 didn't you, sir?

24 A I did. That is a normal shutdown. I did
25 receive a copy of it.

1 Q So that you knew that the plant was reopen-
2 ing on January 6 of '75, didn't you?

3 A That is correct, I knew it.

4 Q And in your conversation in December when
5 you refused to sign that letter, you said you wanted to
6 work the week that was coming to you, didn't you tell
7 that to the employer?

8 A I did.

9 Q Was the week that was coming to you the
10 week of January 6, 1975, Mr. Stallworth?

11 A No, no. I don't see how you say "coming
12 to me."

13 Q Well, I will tell you. Didn't you claim
14 that under the union contract, under the 30 day sharing
15 of the work, you didn't have to accept the layoff on
16 December 13, 1974; didn't you say that?

17 A I said I didn't have to sign for it.

18 Q Did you say you didn't have to sign to
19 accept the layoff, you wanted that week's work that
20 was coming to you; didn't you say that?

21 A I don't have to sign for a layoff. The
22 regular shutdown, automatically two weeks off, and I
23 know to report to work, but with the layoff slip I'm
24 not going back, I don't know when to go.

25 Q Isn't it a fact that when you did talk to

1 Mr. Serwitz sometime after the letter when he told you
2 that you no longer had a job, you said you lost all your
3 seniority because you didn't come in the 6th or the 7th,
4 1975?

5 A He did. I lost seniority and job.

6 Q So you said you no longer had a job. He
7 said to you, did he not, that you had no more seniority,
8 you had to start fresh?

9 A No.

10 Q He told you you lost all your seniority?

11 A I no longer have a job there with the com-
12 pany.

13 Q Didn't he tell you that you lost all your
14 seniority?

15 A No.

16 Q Did you have any discussion about whether
17 you lost or retained your seniority by not coming in on
18 January 6th and 7th, 1975?

19 A No.

20 Q But he did tell you that you no longer had
21 a job?

22 A He did.

23 Q He also told you then you should have known
24 to come back on January 6th?

25 A He did say this, I should have known.

1 Q Do you remember having a conversation after
2 you wrote the letter to the union with whomever you spoke,
3 and you are saying to the union, "Since he didn't tell
4 me to come back by a written letter, it is his word
5 against mine"?

6 MS. KINNEY: Objection.

7 Q Didn't you say that? Didn't you have such
8 a conversation?

9 JUDGE FRIEDMAN: Wait. There is an ob-
10 jection.

11 What is your objection?

12 MS. KINNEY: I withdraw the objection.

13 THE WITNESS: Repeat it.

14 JUDGE FRIEDMAN: You may answer.

15 MR. KATZ: Repeat the question, please.

16 (The reporter read the pertinent portion
17 of the record.)

18 A No.

19 Q Did you have any conversation with the
20 union when you spoke to them about whether it was a
21 written or an oral or verbal notice of coming back?

22 A I had a conversation with a union member,
23 yes.

24 Q You did?

25 A I did.

1 Q Tell me, as best as you can recall, what
2 that conversation was.

3 A I'm being laid off, which I had more seniori-
4 ty than at least two people in the department, with a
5 layoff slip leaving one week prior to everybody else,
6 not getting a notice to report back to work, I don't know
7 when to report.

8 Except for a few friends telling me they
9 are calling back, come and see about the job, even after
10 Mr. Serwitz and I had a conversation.

11 Q Didn't you tell the union official that
12 as you understood it you were entitled to get a written
13 notice of call back, not a verbal notice?

14 A I did tell the official this. It was af-
15 ter I got--assuming that I quit.

16 Q In substance, didn't the union official
17 tell you that you had got the notice verbally, it was
18 just as good. Since you didn't come back, there was
19 nothing that they could do for you.

20 A I did go back for the job more than once.

21 JUDGE FRIEDMAN: No. Look, you were
22 asked a question of what the union official told you.

23 What did the union official tell you?

24 THE WITNESS: The union official tell me
25 by me not reporting to work on the 6th of January that

1 Mr. Serwitz was right, it is nothing they can do for me.

2 JUDGE FRIEDMAN: Was this that same Mr.
3 La Rosa or the La Rosa that you were talking about?

4 THE WITNESS: Right, I do believe so.

5 Q We were talking about a letter you had
6 written to the union. Is this a copy of a letter of
7 March 26, 1975, that you wrote to the union?

8 A This is the copy of a letter.

9 Q Sir, in the first sentence you say, when
10 you wrote to the union, you say, "I am being advised
11 that my employer stated that I was due back to work on
12 January 6, 1975."

13 Who so advised you?

14 A Mr. Serwitz say I should have been back on
15 the 6th of January, '75. This is what that means.

16 Q But you told us that Mr. Serwitz told you
17 that Mr. Serwitz told you that a few days after January
18 the 8th of '75, didn't you earlier?

19 A After I received a letter from him I spoke
20 with the union and I sent this letter to the union and
21 never got any response.

22 Q Well, this letter is dated March 26th.
23 That is more than two months after you received the
24 letter, and in the context of the March 26, 1975 date,
25 I am asking you when you said, "I am being advised by my

1 employer that my employer stated that I was due back on
2 January 6th," who advised you around that time that your
3 employer stated that you should have come back on Janu-
4 ary 6th?

5 A Mr. Serwitz told me that I should have known
6 to report to work on January the 6th. That is what he
7 advised me.

8 Q But he told you this shortly after Janu-
9 ary 8th of '75; isn't that right?

10 A After I received the letter he assumed
11 that I quit. I went to find out what, why he assumed
12 that I quit, and this is when he tell me.

13 JUDGE FRIEDMAN: I don't want to interfere,
14 Mr. Katz, but I think you are puzzled and I am too a
15 little bit, but maybe I can ask a question.

16 When you say "I am being advised," are you
17 referring back to the conversation that you had with Mr.
18 Serwitz shortly after you received the letter from him
19 that they considered you had quit?

20 THE WITNESS: That is correct.

4 21 BY MR. FRIEDMAN:

22 Then you are saying that nothing happened
23 shortly after the January 8th letter and the conversation
24 with Mr. Serwitz, and your writing this letter March 26th;
25 you are referring to the conversation shortly after Jan-

1. uary 8th with Mr. Serwitz; am I right or wrong?

2 A I guess I would say you are right.

3 Q Now then, in this letter also say the
4 mass layoff was on December 20, 1974.

5 You told us earlier that there was no
6 mass layoff, that was the regular shutdown, right?

7 A That is true. If you will look here,
8 the year-end shutdown, it is not a layoff, as I said
9 earlier, it is not a layoff, a year-end shutdown.

10 Q So when you said this was a mass layoff,
11 it was not correct?

12 A It is not a layoff, year-end shutdown.

13 Q So if you use the phrase "it was a mass
14 layoff," that is not correct; am I right?

15 A On the 20th of December that is not correct.
16 As I said, no layoff, shutdown.

17 Q You didn't say it was a layoff?

18 A I stated earlier it was not a layoff from
19 the 20th of December until the 6th of January.

20 Q I am asking you prior to today you did not
21 say that it was a mass layoff?

22 A A year-end shutdown, a mid-summer shutdown
23 for two weeks each.

24 Q Mr. Stallworth, this letter is attached to
25 the affidavit that you signed. In this letter you say

1 that it was a mass layoff. That is not true?

2 A 13th of December, not the 20th.

3 Q It says mass layoff on December 20, 1974.
4 Would you read it, please?

5 A It was not a layoff; a year-end shutdown.

6 Q So when you said it was a mass layoff and
7 you gave it to the Board agent as part of your affidavit,
8 that was not true; isn't that correct?

9 A That was not true; not a layoff, a year-
10 end shutdown.

11 Q As a member of the union, you knew under
12 the terms of the contract there was a grievance procedure,
13 didn't you?

14 A I don't understand what you mean.

15 Q You told us you knew what your rights under
16 the contract were about signing the paper and you weren't
17 going to waive your rights under the contract. You re-
18 member your testimony about that?

19 A Yes, I said I was not waiving my rights.

20 Q Will you look at the contract, the union
21 contract, sir? Aren't you familiar with the grievance
22 procedure that if you have got a gripe or something, you
23 think something is wrong, you have a right to fill out
24 a form and have it taken care of as a grievance?

25 A I have never filled out a form for it or a

1 grievance.

2 Q I didn't ask you if you filled it out, sir,
3 but don't you know under the contract you have a right
4 to fill out such a form?

5 A I never read this book through and I
6 did not really know in a sense that I have a right to fill
7 it out, but I did feel that I had no right to sign nor
8 ask for a layoff.

9 Q Let me take you back to December 11, 1974,
10 when you say you were given a copy of a letter and asked
11 to sign to waive your rights.

12 Now, up to December 11th when you were
13 asked to sign that paper, had you read the union con-
14 tract?

15 A No.

16 Q What was the source of your information
17 that you had rights under a contract to share work for
18 thirty days if you didn't read the contract?

19 A Waiving rights and certain articles, I
20 don't have to sign to waive any rights. This is what
21 Mr. Serwitz pointed out to me in his letter. On certain
22 articles waiving rights. I said I was not waiving any
23 rights, I was not signing.

24 Q Have you ever seen a union contract to
25 this day?

1 A Sure.

2 Q In your conversation with the union offi-
3 cial sometime, I think you placed it in March of '75,
4 did they ask you how come you didn't make a gripe or
5 file a grievance?

6 A No, they did not.

7 Q Let me show you this form and ask you if
8 you have ever seen a blank form like that around the
9 plant.

10 A I have not.

11 Q You have not?

12 A No.

13 Q How many years are you working in your
14 plant on and off; how many years?

15 A About five, maybe six years on and off.

16 Q And in five or six years you worked Local
17 381 was the union all the time?

18 A Yes.

19 Q The same union, right?

20 A Yes.

21 MR. KATZ: Off the record.

22 JUDGE FRIEDMAN: Off the record.

23 (Discussion off the record.)

24 JUDGE FRIEDMAN: On the record.

25 Q You are an hourly rated worker, aren't you?

1 You are an hourly rated worker?

2 A I am.

3 Q At the time in December of 1974, your hourly
4 rate was \$4.86; is that right?

5 A That is true.

6 Q I want to take you back to December 11th
7 of 1974 when you received the letter and you then went
8 to the shop steward, Murray Plotkin; is that his name,
9 Plotkin?

10 A Something like that, yes.

11 Q Do you remember asking the shop steward
12 what kind of B.S. is this, since when do you have to
13 sign for a layoff?

14 A I do.

15 Q And he told you that he would call the
16 union?

17 A Yes, he did. I'm the one that showed him
18 the affidavit to sign.

19 Q Then he came back and told you he spoke to
20 the union, right?

21 A He did tell me this.

22 Q Did he tell you that the letter was all
23 right?

24 A That those that want to sign, it is all
25 right; that those that don't want to sign, it is too
 all right.

1 Q You told him that you didn't see any need
2 to sign it?

3 A Waiving rights.

4 Q You saw no need to sign the letter, what-
5 ever it said?

6 A No need to sign the letter.

7 Q I notice, sir, that the charge that you
8 filed in this case was filed May 16, 1975, and you re-
9 ceived the letter around January the 9th of '75; is
10 that right?

11 A Something like that, yes.

12 Q You waited from January to May 16th, right,
13 before you filed it?

14 A The letter for the union?

15 Q No, the charge at the Labor Board here.

16 A Sure, because I was waiting for an answer
17 from the union.

18 Q The union, you told us, in March gave you
19 an answer that they thought that Mr. Serwitz was right,
20 you were supposed to come back; was that in March?

21 A I spoke with the Attorney-General and he
22 advised me of what to do, so I writes the letter to
23 the union, wait for a response from them, which I did
24 not get a response back, and from I understand, the
25 letter wind up on the job, the shop steward supposedly

1 like had the letter that I sent the union. I never got
2 a response from it.

3 Q Didn't you tell us that sometime in March
4 you spoke to someone at the Union; didn't you tell us
5 that?

6 A Spoke on the phone but--

7 Q On the phone, yes.

8 A I was advised to write the union a letter
9 so that I did.

10 Q Did you hear from them after you wrote
11 the letter?

12 A No.

13 Q Are you telling us they told you Mr. Ser-
14 witz was right before you wrote the letter, that you had
15 no case?

16 A I was advised after I spoke with him,
17 with the union delegate on the phone, to write them a
18 letter and save a copy.

19 Q Mr. Stallworth, I'm trying to find out
20 when it was; was it before or after your March 26, 1975
21 letter that, as you already told us, you had a conversa-
22 tion with the union and they told you that Mr. Serwitz
23 was right, you should have come back on January 6th.

24 A That was after I wrote the letter.

25 Q So you knew in March when you wrote the

1 letter that the union said that Mr. Serwitz was right;
2 is that correct?

3 A That the union was not going to give me any
4 help; I knew that. That is why I wrote the letter.

5 Q They said Mr. Serwitz was right, you should
6 have come back on the 6th of January?

7 A They said I should have.

8 Q Let me show you, I want to call your at-
9 tention, in General Counsel Exhibit No. 1, to the charge
10 that appears there.

11 You signed that, right?

12 A That is my signature.

13 Q And in it you say that since on or about
14 January 6th, 1975, the company failed to recall you.

15 You see that in the first sentence?

16 A Yes.

17 Q There is no question in your mind, though,
18 that you should have been recalled to work on January 6th
19 of '75; am I right?

20 A Not recalled on January 6th. There is a
21 question.

22 Q There is no question but that you claim
23 that you have been going back to work on January 6, 1975;
24 isn't that right?

25 A That is not correct.

1 MS. KINNEY: Objection to the question.

2 A (continuing) That is not correct.

3 Q Well, you look at that statement.

4 Are you then telling me this statement you
5 signed, that states since on or about January 6, 1975,
6 "the above-named company failed to" recall you from
7 layoff?

8 A Up until now they still have not called
9 me.

10 Q Mr. Stallworth, everybody knows that.

11 A I have been there.

12 Q Let me finish.

13 Everybody knows that from December the 13th
14 of 1974 to the present day, you haven't worked for the
15 company; is that right?

16 A That is right.

17 Q No question about that; am I right?

18 A That's right.

19 Q I am now asking you, sir, when you signed
20 the charge in this case before the Labor Board you said
21 the company failed to recall you since on or about Jan-
22 uary 6th; do you see that?

23 MS. KINNEY: Objection, Your Honor. He
24 is asking a man to his legal theory.

25 MR. KATZ: These are facts I am trying to

1. establish.

2. JUDGE FRIEDMAN: What he said in the charge
3. is what he said in the charge. The charge speaks for
4. itself anyway.

5. MR. KATZ: I know the charge speaks for
6. itself, but having looked at the charge, I now want to
7. ask him--I withdraw it.

8. Q You say you should have gone back to work
9. on January 6, 1975.

10. MS. KINNEY: Objection. I don't see how--

11. JUDGE FRIEDMAN: He has answered that no,
12. and I think that is the third time he answered no.

13. MR. KATZ: He said no? All right.

14. I have no further questions.

15. JUDGE FRIEDMAN: Isn't your answer no?

16. THE WITNESS: It is no because--

17. JUDGE FRIEDMAN: Your counsel will bring
18. up whatever reasons are why you said no.

19. Is there much redirect?

20. MS. KINNEY: I have a few questions. I
21. can't tell you exactly how long I will be.

22. JUDGE FRIEDMAN: I think we will save the
23. redirect until tomorrow morning.

24. We will adjourn until ten o'clock tomorrow
25. morning.

1 MS. KINNEY: Your Honor, before you ad-
2 journ, will you instruct my witness, Fred Nelson, that
3 he is still under the subpoena to appear?

4 JUDGE FRIEDMAN: Are you Fred Nelson, sir?

5 MR. FRED NELSON: Yes.

6 JUDGE FRIEDMAN: You must return here
7 at ten o'clock tomorrow -orning, all right?

8 MR. NELSON: Yes.

9 JUDGE FRIEDMAN: You are under subpoena.

10 The hearing is adjourned until ten o'clock
11 tomorrow morning.

12 (At 6:05 o'clock P. M., the hearing was
13 adjourned.)

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

Region 29

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In the Matter of: :

COLUMBIA CORRUGATED CONTAINER CORP., :

Respondent, :

-and- :

Case No.
29-CA-4358

JOHN W. STALLWORTH, :

An Individual. :

----- x

16 Court Street
Brooklyn, New York
Tuesday, February 3, 1976

The above-entitled matter came on for
further hearing pursuant to adjournment, at 10:15 A. M.

BEFORE:

MORTON D. FRIEDMAN,
Administrative Law Judge.

APPEARANCES:

ELIZABETH KINNEY, ESQ., Counsel for the
General Counsel.

CHARLES KATZ, ESQ., 360 Lexington Avenue,
New York, New York,
AOBO Respondent.

* * *

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
John Stallworth			102	106
			111	
Fred Nelson	112	116	124	124
Charles Serwitz	128	158		
Edward McCloud	160			

E X H I B I T S

<u>Respondent's Nos.</u>	<u>For Identification</u>	<u>In Evidence</u>
2	142	144
3	147	148

* * *

P R O C E E D I N G S

JUDGE FRIEDMAN: The hearing is in order.

REDIRECT-EXAMINATION (CONTINUED)

BY MS. KINNEY:

Q Mr. Stallworth, turning to the conversation that you had with Mr. Serwitz on December 11th.

A Yes.

Q Would you tell us again, please, to your best recollection, what he said to you and what you said to him in that conversation?

A Yes.

When he came to me and asked me to sign these papers, I tell him, I see no need for me signing it, I'm not the least man there, I have seniority over at least one of the other employees that I knew of at the time.

I even mentioned his name.

He tell me it's a different position entirely or something of that nature.

I tell him I still see no reason being laid off.

I said that I don't see why I should be the one to go.

He hold the operators and laid the headsetters off.

Q Do you remember anymore of the conversation?

1 A. He tell me about the difference in the position.

2 I tell him that my wife is expecting another
3 baby, I don't see why I should be laid off at
4 Christmas time and I'm not the least man.

5 He tell me he don't give a damn about the wife
6 or the family.

7 I asked him if he wanted me to go back to work.

8 He said he didn't give a damn whether I work
9 or not.

10 Q. Do you remember anything further in the
11 conversation?

12 A. I told him if he wanted me to work, leave me
13 alone, I'll go back to work.

14 He walks off and I goes back and continues my
15 work.

16 Q. Was there anyone else present?

17 A. There was some -- there were some of the guys
18 in the department, they was around.

19 Q. Do you remember any of the people?

20 A. It happened by what we call the three-color
21 press.

22 One headsetter was there at the back of the
23 machine where the conversation took place.

24 The operator of that machine was, like, standing
25 in the aisle. Another machine was nearby, which two

1 other guys were near.

2 Q Do you remember the names of anybody?

3 A Asaminis (phonetic), Salcedo, Joe Halpin, Allan
4 Travis, Aaron Mosley, Fred Nelson, Hudson Strother.

5 All of them did the same department.

6 JUDGE FRIEDMAN: There's auto noise out
7 there. The Reporter has to get everything that you
8 are saying.

9 Everybody in the room has to get
10 everything you're saying. You'll have to speak
11 slower and louder.

12 THE WITNESS: Very good.

13 BY MS. KINNEY:

14 Q Now, turning to when you received the letter
15 dated January 8th.

16 A Right.

17 Q Would you tell us what you did after you got
18 that letter?

19 A Yes.

20 I contacted the ones I was riding with. I went
21 to work to find out why -- he had assumed I had quit.

22 Q Whom did you talk with?

23 A I talked with Mr. Serwitz that day, I believe.

24 And later I went again when Mr. McCloud sent for
25 me when he assumed they made a mistake.

1 This day I don't think I saw Mr. Serwitz.

2 Q Now, with respect to your conversation with
3 Mr. Serwitz, would you tell us what you said and what
4 he said?

5 A How can he assume that I quit my job?

6 I have no notice to return back to work. The
7 layoff slip that I'm automatically laid off. When
8 I'm returned to work, he sent me a telegram or
9 registered letter, assuming that I quit, or something
10 of that nature.

11 He tell me that I gave him a hard time, as far
12 as he concerned I no longer have a job with the
13 company.

14 Q Now, when was this conversation, to the best
15 of your recollection?

16 A After I received the letter from him assuming
17 that I quit the job.

18 Q Did anybody from the company or the union ever
19 explain to you the work-sharing plan?

20 A No.

21 Q Did -- strike that.

22 MS. KINNEY: No further questions.

23 MR. KATZ: May I have his affidavit,
24 please?

25 MS. KINNEY: Yes.

(Hanging.)

RECROSS-EXAMINATION

BY MR. KATZ:

Q When you were examined or questioned by the Board agent in June of 1975, Mr. Stallworth, did you tell him what you told us this morning about you told Mr. Serwitz your wife was having a baby and all that thing?

A Possibly I did tell him.

But knowing just exactly whether he put it down or not, I'm not sure.

Q You testified yester, you were asked about what happened on December 11th when you spoke to Mr. Serwitz, you mentioned not a word about your wife having a baby.

Isn't that true?

Didn't you say yesterday nothing about that?

A I did not mention it yesterday, no.

Q And isn't it also a fact that yesterday when you were examined and cross-examined, you didn't say a word that Mr. Serwitz, in substance, said he didn't give a damn whether you worked or not?

A I did not say that yesterday either.

Q And when the Board agent was examining you and trying to find out what your complaint was in June of

1 1975, did you or did you not tell him what you said
2 this morning, that, in substance, Mr. Serwitz said
3 to you:

4 He didn't give a damn whether you worked or
5 not?

6 A I said I probably told them.

7 Q You probably told him, you think?

8 A I don't know whether he put it in the
9 affidavit or not.

10 Q Your best recollection is you told him; is
11 that right?

12 A Yes, that's correct.

13 MR. KATZ: Will counsel for the General
14 Counsel stipulate that there is no reference whatsoever
15 in Mr. Stallworth's affidavit to this conversation
16 about Serwitz having said he didn't give a damn
17 whether I worked or not?

18 MS. KINNEY: Yes.

19 MR. KATZ: Will you stipulate that there
20 is no reference in his affidavit to that?

21 MS. KINNEY: Yes.

22 BY MR. KATZ:

23 Q Now, when you say that Mr. Serwitz said to you
24 on December 11th and subsequently that he didn't give
25 a damn whether you worked or not because you were a

1 troublemaker, you were giving him a hard time, you
2 felt he was laying you off because he wanted to get
3 even with you?

4 MS. KINNEY: Objection, your Honor.

5 He's asking for a state of mind.

6 BY MR. KATZ:

7 Q What did you understand --

8 JUDGE FRIEDMAN: No.

9 Objection overruled.

10 You may answer the question.

11 BY MR. KAT

12 Q Do you want that question re-read to you, sir?

13 A Please.

14 (Record read.)

15 A I wouldn't say that I feel so.

16 Q You wouldn't say what, sir?

17 A I wouldn't say that he had in mind that he was
18 trying to get even with me, whether I'm a troublemaker
19 or not.

20 Q I want to know whether you understood
21 Mr. Serwitz's statement --

22 JUDGE FRIEDMAN: I'm sorry, I will have
23 to sustain the objection.

24 I'm going to reverse my ruling.

25 BY MR. KATZ:

1 Q When Mr. Serwitz made that statement to you,
2 what did you understand it to mean?

3 MS. KINNEY: Objection.

4 JUDGE FRIEDMAN: Sustained.

5 It doesn't --

6 MR. KATZ: It goes to Mr. --

7 JUDGE FRIEDMAN: It goes to Mr. Serwitz's
8 motivation but not to his, counsel.

9 I don't -- I don't -- I'm not interested
10 in what his motivation was, I'm interested in what
11 Mr. Serwitz's motivation was.

12 BY MR. KATZ:

13 Q When Mr. Serwitz spoke to you on December the
14 11th of 1974, you knew that there was going to be some
15 sharing of work?

16 A I knew that there was going to be a layoff.

17 I knew that there was going to be a layoff,
18 I said.

19 Q And you told us yesterday that you knew that
20 all of the other people in the group of 25 or 28, had
21 agreed rather than share the work to take the layoff?

22 A I didn't say that they all had agreed, I said
23 that everybody had signed this affidavit.

24 Q They had signed that December 11th paper
25 waiving their rights to share the work?

1 A. To remain on a layoff.

2 Q. And not share the work?

3 A. I didn't say share the work.

4 They were waiving rights to remain on layoff.

5 Q. After December 11th, for the next 30 days,
6 you told us that under the contract that you had a
7 right to share in the work.

8 Isn't that right?

9 MS. KINNEY: Objection, objection.

10 He's mischaracterized the testimony.

11 He didn't testify with respect to that.

12 MR. KATZ: He didn't testify with respect
13 to what?

14 MS. KINNEY: Anything about under the
15 contract of the 30 days.

16 MR. KATZ: I withdraw the question.

17 BY MR. KATZ:

18 Q. Mr. Stallworth, when you were testifying that
19 testifying that you didn't want to give up any rights
20 under the contract, what rights were you referring to?

21 A. Benefits, holiday pay and et cetera.

22 Q. And this is why you didn't want to sign that
23 paper, you didn't want to give up fringe benefits,
24 holidays, et cetera; is that right?

25 A. Knowing my wife was in the hospital, I needed to

1 be working, I needed everything that I could make.

2 Q And you didn't want to sign this paper on
3 December the 11th because you didn't want to give up
4 the fringe benefits and the holidays because your
5 wife was having a baby.

6 Is that what you're telling us?

7 A That's what I'm saying.

8 MR. KATZ: No further questions.

9 JUDGE FRIEDMAN: Anything further?

10 REDIRECT-EXAMINATION

11 BY MS. KINNEY:

12 Q Do you recall whether there was any reference
13 in the letter that you were asked to sign, to the
14 contract?

15 Was there any reference to the contract in
16 the paper that you were asked to sign?

17 Do you recall?

18 A How do you mean "reference"?

19 JUDGE FRIEDMAN: Is that paper in
20 evidence?

21 MR. KATZ: I think it speaks for itself.

22 MS. KINNEY: Yes.

23 JUDGE FRIEDMAN: Overruled.

24 Sustained.

25 BY MS. KINNEY:

1 Q What did you say to Mr. Serwitz on December the
2 11th after he asked you to sign the paper?

3 MR. KATZ: Objected to.

4 Already answered.

5 She asked him on redirect earlier what
6 he said.

7 He said it yesterday again.

8 JUDGE FRIEDMAN: This is about the
9 third time you've gone over this same thing.

10 Sustained.

11 MS. KINNEY: No further questions,
12 your Honor.

13 MR. KATZ: No further questions.

14 JUDGE FRIEDMAN: All right.

15 You may step down, sir.

16 (Witness excused.)

17 JUDGE FRIEDMAN: Call your next witness,
18 please.

19 MS. KINNEY: Fred Nelson.

20 Whereupon, FRED NELSON, was called as a
21 witness, and having been first duly sworn by the
22 Administrative Law Judge, was examined and testified
23 as follows:

24 DIRECT-EXAMINATION

25 BY MS. KINNEY:

1 Q Would you please state your full name?

2 A Fred Nelson.

3 Q What's your home address?

4 A 8824 Merrick Boulevard, Jamaica.

5 Q Mr. Nelson, I'd like to ask you if you would
6 try to speak up so everybody in the room can hear you.

7 A Yes.

8 Q By whom are you employed?

9 A Columbia Corrugated Container.

10 MR. KATZ: I can't hear you.

11 THE WITNESS: Columbia Corrugated. Container.

12 BY MS. KINNEY:

13 Q About how long have you worked there?

14 A Off and on, about 15 years.

15 Q And what's your position?

16 A I'm a press operator.

17 Q And who is the boss?

18 A My supervisor is Ed McCloud.

19 Q Did you receive a subpoena to appear here?

20 A Yes, I did.

21 Q Are you acquainted with an employee by the
22 name of John Stallworth?

23 A I am.

24 Q Do you recall the conversation between
25 Mr. Serwitz and Mr. Stallworth on December of 1974?

1 A. I overheard part of the conversation.

2 Q. Could you tell us to the best of your recollection
3 what Mr. Serwitz said and what Mr. Stallworth said?

4 A. Well, he came over --

5 JUDGE FRIEDMAN: Who is "he"?

6 THE WITNESS: Charley Serwitz.

7 A. -- and he asked him -- the part that I heard --
8 why didn't he sign the --

9 JUDGE FRIEDMAN: You'll have to speak
10 up louder, sir.

11 THE WITNESS: Yes, sir.

12 A. -- the paper to share in the layoff, you
13 know.

14 So Stallworth said that he refused to --
15 sign because he didn't feel like he should sign
16 because there was guys under him that he feel, like,
17 should have got laid off.

18 He wasn't going to sign to get laid off.

19 Q. Do you remember anymore of the conversation?

20 A. I --

21 Q. Well, was there anymore to the conversation?

22 A. Yes, but I don't recall it.

23 Q. What happened after that?

24 A. He walked off.

25 Q. Now, do you recall seeing Stallworth in January,

1 approximately, 1975, at the plant?

2 A The latter part of January, the last of
3 January.

4 Q Would you tell us when you saw him and under
5 what circumstances?

6 A I think -- he was told to come in.

7 Q By whom?

8 MR. KATZ: I move to strike his answer.

9 JUDGE FRIEDMAN: Sustained.

10 BY MS. KINNEY:

11 Q How do you know that?

12 JUDGE FRIEDMAN: If the previous question
13 was sustained, your second question naturally can't
14 remain.

15 MS. KINNEY: All right.

16 BY MS. KINNEY:

17 Q Did you hear any conversations with respect to
18 Stallworth around that time?

19 A They told Allan Travis to tell him to come in.

20 Q Do you remember who told him?

21 A Ed McCloud.

22 Q And were you there?

23 A Yes, I was there.

24 Q And then what happened?

25 A I think Stallworth come in the next day. He

1 stood over by the time clock.

2 I started to work, so I don't know what
3 happened.

4 Q Did you see him go to work?

5 A No, he didn't go to work.

6 MS. KINNEY: No further questions.

7 MR. KATZ: Do you have an affidavit for
8 this witness, Miss Kinney?

9 MS. KINNEY: Here.

10 (Handing.)

11 CROSS-EXAMINATION

12 BY MS. KINNEY:

13 Q Now, this conversation that Mr. Stallworth
14 had with Mr. Serwitz on December 11th, 1974, how far
15 away were you from them when they were talking?

16 A About from me to there.

17 Q From about where you are pointing to Mr. Serwitz?

18 A Yes.

19 MR. KATZ: Can we stipulate how far
20 away that would be?

21 JUDGE FRIEDMAN: About 20 feet, I would
22 say.

23 MR. KATZ: Is that all right with you?

24 MS. KINNEY: Yes, I guess so.

25 MR. KATZ: About 20 feet?

Everybody agrees?

JUDGE FRIEDMAN: Yes.

BY MR. KATZ:

Q Were they talking in normal talking voice?

A No.

It was a little bit louder than normal.

Q A little bit louder?

A Yes.

Q How loud as against the normal talking voice?

A Well, you know how a person talk in anger.

Q Was Mr. Stallworth angry?

A Yes, he was a little angry.

Q And he was talking very loudly, Mr. Stallworth?

A Yes, he was talking loud.

Q And he said that I'm not going to sign the paper?

A Yes.

Q And are you telling us that you heard Mr. Stallworth say that he wasn't going to sign the paper waiving his work-sharing rights?

A That's right.

Q You heard him say those words, "work-sharing rights"?

A That's right, yes.

Q That was Stallworth saying to Mr. Serwitz?

1 A That's right.

2 Q "I'm not signing that paper and I won't sign
3 and I won't waive my work-sharing rights"?

4 A Yes, that's right.

5 Q You were here yesterday while Mr. Stallworth
6 was testifying, weren't you, throughout the --

7 A Yes.

8 Q -- entire time of his testimony?

9 A Yes, right.

10 Q Please speak up.

11 A I said "yes."

12 Q I'm sorry, sir, I didn't hear you.

13 About what time of day did this conversation
14 between Mr. Serwitz and Mr. Stallworth take place?

15 A About three in the afternoon.

16 Q And while they were talking, what were you
17 doing?

18 A Well, I was lead man at the time.

19 Q /You were leaving?

20 A I was the lead man at the time.

21 Q Oh, lead man?

22 A Yes.

23 Q I'm sorry.

24 A I was on the floor?

25 Q On what floor?

1 A. I was in charge of Stallworth.

2 I was over Stallworth.

3 Q. Well, were you in charge of anything else
4 in addition to Stallworth?

5 A. The whole department, I was in charge of.

6 Q. You were in charge of the whole department at
7 that time?

8 A. Yes.

9 Q. And what were you doing, going around the
10 department to see if the fellows were doing their
11 work?

12 A. Right.

13 Q. And at the time that Mr. Stallworth and
14 Mr. Serwitz were talking, you were following out
15 your duties of going around to see that everybody in
16 the department was doing their work?

17 A. Right.

18 When they started arguing, I walked a little
19 closer, you know.

20 Q. You walked a little closer to them?

21 A. Yes, you know, to see what the argument was
22 about.

23 Q. And before, when you told us about how close
24 you were, about 20 feet, that's the 20 fee after you
25 walked, that is, that you were within 20 fee of where

1 they were talking?

2 A. Right.

3 Q Were other employees doing their work?

4 A Yes.

5 Q Were their machines going on?

6 What kind of operations are done in that
7 department where you're the lead man?

8 A It's the Printing Department.

9 Q Yes.

10 Are there machines?

11 A Yes.

12 Q What kind of machines?

13 A Printing presses, you know, rotary sliders and
14 printing presses.

15 Q And how many people were working in that
16 department at the time of this conversation?

17 A Close by where they was talking?

18 Q You said where you were the lead man, in that
19 department.

20 A What do you mean?

21 What do you mean?

22 Q How many people were working in that
23 department in which you were the lead man on December
24 11th at around three o'clock?

25 A 12.

1 Q 12?

2 A About 12, yes.

3 Q And between where you were standing and the 20
4 feet where Mr. Stallworth and Mr. Serwitz had this
5 conversation, were there any other people working?

6 Were there machines in between?

7 A Yes.

8 Q And about how many people were there working
9 on machines in between where you were standing and
10 where Stallworth and Serwitz were talking?

11 A Well, there was a machine on this side
12 (Indicating); there's a machine in the middle which
13 he was standing behind and there was a machine on
14 this side and there was a press on this side, too
15 (Indicating):

16 The press on this side (Indicating), I was
17 standing near the front where they were standing
18 behind the press like this (Indicating):

19 And there was no press running at this
20 particular time except the rotary slider.

21 Q Well, where were the employees that were --

22 A There was only --

23 Q Let me finish my question, sir.

24 Where were the employees who were supposed to
25 operate those machines at that time?

1 A. Well, the press they were standing behind was
2 down. It wasn't operating.

3 I had no operators on that machine.

4 Stallworth -- like, this press right here and
5 the press in the middle (Indicating), Stallworth was
6 working on this press right here (Indicating).

7 He, in turn, had walked behind this machine
8 when Charlie Serwitz talked to him. That's when they
9 had the conversation.

10 Q. Behind the machine?

11 A. Yes.

12 Q. These machines, how tall are they?
13 Can you describe them?

14 How wide are they?

15 A. About from here (Indicating) to right here
16 (Indicating).

17 Q. From where did you say again?
18 You said from here.

19 A. From this pole (Indicating).

20 Q. To about where?

21 A. To here (Indicating).

22 Q. About ten, 12 feet, would you say?

23 A. Yes.

24 Q. That's the width of the machine?

25 A. Yes.

1 Q How tall is the machine, how high is it?

2 A About six feet.

3 Q About six feet?

4 A Yes.

5 Q And Mr. Stallworth and Mr. Serwitz were
6 behind the machine, you say?

7 A Yes.

8 The machine they were behind was only about
9 this high(Indicating).

10 Q When you say "this high," how high are you
11 indicating?

12 A About five feet, maybe four and a half feet.

13 Q I see. *

14 A It's a real small one.

15 It's about the width of this desk here
16 (Indicating).

17 Q Well, were they facing you or were their
18 back to you?

19 A Stallworth was facing me.

20 Q And Mr. Serwitz?

21 A And his back was to me.

22 Q When you say "his back," who is the "his"?

23 A Charlie Serwitz.

24 MR. KATZ: I have no further questions.

25 MS. KINNEY: I have one.

1 REDIRECT-EXAMINATION

2 BY MS. KINNEY:

3 Q Was there any mention in the part of the
4 conversation --

5 MR. KATZ: I object to this as leading.

6 She's suggesting what part of the
7 conversation is.

8 BY MS. KINNEY:

9 Q In the conversation, was there any mention
10 of a return to work date?

11 MR. KATZ: Well, if it's a leading
12 question, I submit, your Honor, the damage is already
13 done by suggesting.

14 I think if I raised an objection, I
15 think that before she puts the question in full,
16 there should be a ruling.

17 JUDGE FRIEDMAN: Overruled.

18 BY MS. KINNEY:

19 Q Was there any mention in the conversation
20 between Serwitz and Stallworth of a return to work
21 date, that you recall?

22 A No, I don't.

23 MS. KINNEY: No further questions.

24 RECROSS-EXAMINATION

25 BY MR. KATZ:

1 Q Are you saying you don't recall it?

2 A I'm saying I didn't hear no mention about
3 any return to work date.

4 Q You didn't hear any mention of it?

5 A That's correct.

6 Q And before counsel for the General Counsel
7 just asked you -- and asked you whether there was a
8 conversation, you remember being asked a few minutes
9 ago to tell us what the conversation was on December the
10 11th and you told us.

11 Is that right, sir?

12 A Yes.

13 Q You told us the full conversation the first
14 time about what happened on December the 11th; is
15 that right?

16 A Right.

17 MR. KATZ: No further questions.

18 MS. KINNEY: No further questions.

19 JUDGE FRIEDMAN: All right.

20 You may step down, sir.

21 (Witness excused.)

22 JUDGE FRIEDMAN: Miss Kinney, anything
23 further?

24 MS. KINNEY: Your Honor, I would like a
25 few minutes to look at some documents that I subpoenaed.

1 JUDGE FRIEDMAN: All right.

2 Do you have them with you?

3 MR. KATZ: What documents are you
4 talking about?

5 Are you talking about the payroll records?

6 MS. KINNEY: Yes.

7 MR. KATZ: Are we on or off the record?

8 JUDGE FRIEDMAN: We can go off the record
9 at this point.

10 (Discussion off the record.)

11 JUDGE FRIEDMAN: Back on the record.

12 We will take a recess at this time.

13 (Recess taken at 11:15 A. M.)

14 JUDGE FRIEDMAN: Back on the record.

15 In an off-the-record discussion with
16 regard to certain matters which were subpoenaed by
17 the counsel for the General Counsel but which were
18 not able to be presented here today because of the
19 weather conditions, of which we all are aware, it
20 was decided that we would proceed and that those
21 records would be available to us, to the General Counsel,
22 for her inspection tomorrow morning.

23 Off the record again, please.

24 (Discussion off the record.)

25 JUDGE FRIEDMAN: Back on the record.

1 Mr. Katz, the matter of the subpoena
2 having been straightened out in the off-the-record
3 discussion, we will proceed.

4 General Counsel has rested?

5 MS. KINNEY: It is my understanding --
6 well, at this time, General Counsel will rest subject
7 to production of the documents and presentation of
8 any documents if I so decide to do so.

9 JUDGE FRIEDMAN: All right.

10 Mr. Katz.

11 MR. KATZ: We have no objection to that,
12 your Honor.

13 I want to reserve our motions until the
14 counsel for the General Counsel does in fact --

15 JUDGE FRIEDMAN: Completely rest?

16 MR. KATZ: Yes.

17 JUDGE FRIEDMAN: Surely, you certainly
18 may do so.

19 If you are going to proceed with your
20 case, I would appreciate it, sir.

21 MR. KATZ: Take the stand, please,
22 Mr. Serwitz.

23 Whereupon, CHARLES SERWITZ, was called
24 as a witness and having been first duly sworn by the
25 Administrative Law Judge, was examined and testified as

1 follows:

2 DIRECT-EXAMINATION

3 BY MR. KATZ:

4 Q Would you please state your full name for
5 the record?

6 A Charles Serwitz.

7 Q What's your home address?

8 A 23 Hummingbird Drive, Roslyn, Long Island.

9 Q Mr. Serwitz, in what capacity are you
10 associated with Columbia Corrugated?

11 A I'm the President of the company.

12 Q For approximately how long have you held
13 that position?

14 A Six years.

15 Q Now, Columbia Corrugated is presently in
16 collective bargaining relations with Local 381, which
17 is the union involved in this case, in the complaint?

18 A Yes.

19 Q For about how many years have Columbia
20 Corrugated and the union had contractual relations?

21 A Approximately 20 years.

22 Q Did there come a time in October 1974 when the
23 company issued a notice with respect to a forthcoming
24 plant close down and a reopening?

25 A Yes.

1 Q I show you General Counsel's Exhibit #3, and
2 ask you whether that is a copy of the notice?

3 (Hanging.)

4 A Yes.

5 Q Was that distributed to all of the workers?

6 A Yes, sir.

7 Q Now, subsequent to October 22nd, 1974, did
8 there come a time when the company was going to
9 institute layoffs?

10 A Subsequent to what date?

11 Q October 22nd, that notice that was just handed
12 to you.

13 A I --

14 Q After October 22nd, 1974?

15 A Yes, it was after the notice that we realized
16 that we would have to go into a layoff program.

17 Q And about when did those layoffs commence?

18 A The latter part of November.

19 I would say about the 15th.

20 We started laying off approximately the 15th
21 of November.

22 Q And with respect to the amount of seniority
23 that people had, how much seniority did those people
24 have who started to be laid off around the mid of
25 November of 1974?

1 A. Everyone who was laid off in November of 1974
2 had less than one year's seniority.

3 Q. Now, did there come a time after that,
4 Mr. Serwitz, when there was to be additional layoffs?

5 A. Yes.

6 We realized we would have to go further than
7 just the one-year people.

8 Q. And I show you General Counsel's Exhibit #4.
9 That's the December 11th, 1974 notice.

10 (Handing.)

11 A. Yes, sir.

12 Q. Can you tell us, sir, the circumstances which
13 led to the issuance of that letter to the employees?

14 A. Yes.

15 Q. Please.

16 A. When we decided that we would have to go into
17 further layoffs in order to conform to the contract,
18 we had to go into a work-sharing program for at least
19 30 days.

20 Q. Let me stop you there because I just want to
21 have the record clear.

22 A. Right.

23 Q. Up to this point, Mr. Serwitz, you've had
24 people laid off with less than one year's seniority?

25 A. Yes.

1 Q Under the contract, which is in evidence,
2 people were less than one year --

3 MR. KATZ: If it please, your Honor,
4 they are not involved in the work sharing, its
5 only people were more than one year.

6 BY MR. KATZ:

7 Q Is that correct, sir?

8 A. Yes.

9 Q All right.

10 Would you please continue.

11 A. Yes.

12 In order to institute that, we decided how
13 many people we would have to put on layoff to reduce
14 the staff to what we needed to conduct our business
15 as it was at that point.

16 The number was approximately 25.

17 I think the actual number was closer to 29,
18 but at that time we were talking about 25 people.

19 So we picked the 50 or so least senior
20 people, divided them up into two groups, you know,
21 according to seniority, and they were going to share
22 the work for the next 30 days.

23 Q All right.

24 MS. KINNEY: Excuse me.

25 Could you clarify who the "we" is when you

1 say "we"?

2 BY MR. KATZ:

3 Q You've been saying that we decided the work
4 sharing and we decided this and that.

5 Who is the "we"?

6 A The "we" is Jack Tyrell, who is my plant
7 manager, and Ed McCloud, who is the general foreman.

8 Q They consulted with you about the conditions
9 in the plant?

10 A Well, they're in the plant.

11 They told me how many people we needed or
12 would have to let go to make an efficient operation.

13 Q You say you have two groups of about roughly
14 25 each?

15 A Right.

16 Q For the sake of reference, can we use, with
17 consent of counsel for the General Counsel, this
18 group of each -- that the first 25 would be the least
19 senior and the second 25 were the more senior?

20 MR. KATZ: Is that okay with you?

21 MS. KINNEY: Okay.

22 BY MR. KATZ:

23 Q Now, Mr. Serwitz, with respect to the group
24 of around 25 of the less senior, did Mr. Stallworth
25 fall into that category?

1 A Yes.

2 Q Okay.

3 Now, with respect to this work-sharing
4 program that you're saying, that is, for the week in
5 which December 11th, 1974 fell, Mr. Stallworth was
6 working; is that right?

7 A Yes.

8 Q Under the work-sharing plan for the following
9 week, that is, the week commencing December 16th,
10 1974, I believe, the junior group of the 25 would not
11 work; is that correct?

12 A That's right.

13 Q And the group--

14 MS. KINNEY: Could we have -- I just
15 have a general objection to the fact that the
16 witness is not telling about the work-sharing plan.

17 Maybe we could have it elicited from him
18 as to how it worked?

19 MR. KATZ: May we go off the record?

20 JUDGE FRIEDMAN: Yes.

21 Off the record.

22 (Discussion off the record.)

23 JUDGE FRIEDMAN: Back on the record.

24 Please continue, Mr. Katz.

25 BY MR. KATZ:

1 Q Mr. Serwitz, would you please explain this
2 work-sharing arrangement, starting with the work week
3 commencing December 16th, 1974?

4 A Yes.

5 The contract calls for sharing of work for
6 30 days.

7 The way it worked out was that the least
8 senior group would be off the week of December 16th.

9 The next senior group would be off the
10 following week.

11 The least senior group would be off the week
12 following that, which would have been the 27th of
13 December, or thereabouts.

14 Q Okay.

15 A And then the least senior group would come
16 back on January 6th, and that would be their last
17 week of work, after which time they would be on
18 what the union calls permanent layoff.

19 Q Now, with respect to the group that would come
20 back to work on January 6th, 1975 and work that week
21 and then be on permanent layoff, was Mr. Stallworth
22 in that group?

23 A Yes.

24 Q Now, on or about December 11th of 1974, with
25 respect to the senior group that you've testified to

1 who would under this arrangement come back on
2 January 6th, 1975 and work that week and then be
3 laid off --

4 A Yes.

5 Q -- was there some conversation in the plant
6 about not following or following this work schedule
7 sharing?

8 A Yes, there was.

9 Q Do you recall how it came about?

10 A Yes.

11 A good many of the men -- I don't know how
12 many -- were on the night shift.

13 The night shift shop steward, R. L. Ridgeway,
14 came to me and said that his men would like to forget
15 the work sharing and go directly on layoff.

16 He explained to me that instead of coming back
17 to work January 6th, they would rather go right in
18 and apply for unemployment insurance as long as they
19 were going to be laid off on January the 13th anyway.

20 Q So now you're telling us that these people
21 rather than to come back for one week starting
22 January the 6th and then being laid off on January the
23 13th, were prepared to take the layoff as of the end
24 of December 13th, 1974?

25 A Yes.

1 Q And then that form was prepared?

2 A Well, not at that point.

3 I told Ridgeway that it was contrary to
4 the contract and that I couldn't do it without the
5 union's consent.

6 Q Then what happened?

7 A He came to me the next day and told me that
8 the union had no objection if the men had no
9 objection.

10 Q And then what happened?

11 A Well, I called the union to verify that.
12 I spoke to Mr. Cianciulli.

13 Q And did he verify it?

14 A Yes.

15 He said that if the men -- he told me in
16 certain language and in certain words that the men
17 are the only ones who could do that, the union and
18 me, Columbia, could not eliminate that -- waive that
19 part of the contract.

20 At that point I distributed this waiver at
21 the suggestion of Mr. Cianciulli to protect both
22 the company and the union.

23 Q And you say you distributed it?

24 A Yes.

25 Q To whom did you distribute it?

1 A I gave the waivers to Mr. Ridgeway.

2 Q Now, did there come a time, Mr. Serwitz,
3 when it was brought to your attention that
4 Mr. Stallworth had not signed that form?

5 A Yes.

6 Q When it came to your attention at that point,
7 how many of the other people in the junior seniority
8 group of 25 or 29, had signed the paper?

9 A All of them except Mr. Stallworth.

10 Q When it came to your attention that
11 Mr. Stallworth did not sign that paper, what did
12 you do?

13 A I felt that perhaps Mr. Stallworth --

14 Q No, no, don't tell us what you felt, we want
15 to know what you did.

16 A Okay.

17 I went to see Mr. Stallworth to explain to
18 him what the waiver meant.

19 Q Now, is that the date of December the 11th,
20 1974 that Mr. Stallworth has testified to yesterday
21 and today?

22 A Yes.

23 Q Okay.

24 Now, will you tell us where you were in the
25 plant and where Mr. Stallworth was -- first, what was

1 the position of each of you?

2 A Well, I went to his department, which is the
3 Printing Department.

4 Q And you heard Mr. Nelson testify this morning
5 that Mr. Nelson was about 20-odd feet away?

6 A Yes.

7 Q Did you see Mr. Nelson?

8 A I knew that he was in the department.
9 I didn't see him at the time.

10 Q Okay.

11 Now, what did you say to Mr. Stallworth and
12 what did he say to you at the time?

13 A I told him, Mr. Stallworth, that the waiver
14 was in his -- was for his advantage because he
15 could -- because he was going to be laid off anyway
16 and this way he could start drawing unemployment
17 insurance immediately.

18 Q Well, did you tell him when he would be laid
19 off, anyway?

20 A Yes.

21 I told him that he would be laid off at the
22 end of the work week, that is, on the 13th and return
23 to work on January the 6th and then be laid off
24 permanently on the 13th of January, starting the week
25 of the 13th of January.

1 Mr. Stallworth told me that he didn't want
2 to give up any of his rights, that he wanted to
3 work.

4 Q And what reply, if any, did you make to that?

5 A I didn't make any reply.

6 I told him that it was to his advantage to
7 sign it.

8 Q Mr. Witness, when you say replied.

9 You now say you did say something.

10 What did you say to him?

11 A I tried to discuss the advantages of the
12 waiver.

13 Q When you say you discussed, tell us as best
14 you can recall, sir, what you said to Mr. Stallworth
15 about these advantages.

16 A All right.

17 I repeated to Mr. Stallworth that the waiver
18 was not giving up any of his rights, that it merely
19 eliminated that one clause of the contract which
20 called for work sharing and that if he didn't sign
21 the waiver, he would return to work on January the
22 6th for one week and consequently thereafter be on
23 permanent layoff.

24 Q And what did he say to that?

25 A He said that he wanted to work.

1 Q And what did you then say to him?

2 A I didn't say anything to him.

3 I walked -- I walked away.

4 I went to the shop steward.

5 Q Now, how long did this conversation that you've
6 now related to us that you had with Mr. Stallworth,
7 last?

8 A Just three or four minutes.

9 Q You heard Mr. Nelson saying that -- in this
10 conversation, that you and Stallworth were angry and
11 were, in effect, screaming at each other.

12 A No.

13 Q Did you hear him so testify?

14 A Yes, I did; I'm sorry.

15 Q Is that a fact?

16 A I was --

17 MS. KINNEY: Objection.

18 I withdraw that objection.

19 A I deny that I was screaming and yelling.

20 Mr. Stallworth was angry because he was facing
21 a layoff.

22 I understood that.

23 Q But was Mr. Stallworth screaming or yelling?

24 What tone of voice was he using?

25 A He wasn't screaming or yelling.

1 Q What tone of voice were you using?

2 A Moderate tone, loud enough to be heard over
3 the notice in the plant.

4 Q Now, I'd like to call your attention,
5 Mr. Serwitz, to January 1975.

6 I want to show you General Counsel's Exhibit #6
7 in evidence.

8 (Hanging.)

9 A Yes.

10 Q Now, the original of that letter, was it sent
11 to Mr. Stallworth?

12 A Yes.

13 Q I note that it's dated January 8th, 1974.
14 What was the date that it was sent?

15 A It was January 8th, 1975.

16 Q I further note in the letter, a reference to
17 a period exceeding 72 hours and about company rules.

18 In fact, how many hours does the company's
19 rules provide for about an employee not reporting
20 to work?

21 A 48 hours.

22 Q I show you --

23 JUDGE FRIEDMAN: What was the date of
24 that letter, Mr. Katz?

25 THE WITNESS: Here it is, your Honor.

1 (Hanging.)

2 JUDGE FRIEDMAN: January 8th.

3 Proceed.

4 MR. KATZ: May I have this document
5 marked for identification, please.

6 If we can go off the record, your Honor,
7 maybe I can get a stipulation as to this document?

8 JUDGE FRIEDMAN: Yes.

9 We'll be off the record.

10 (Discussion off the record.)

11 JUDGE FRIEDMAN: Back on the record.

12 MR. KATZ: Please mark this for
13 identification.

14 (The above-mentioned was received
15 and marked as Respondent's Exhibit
#2 for identification.)

16 BY MR. KATZ:

17 Q I want to show you General Counsel's Exhibit #2
18 in evidence, and specifically direct your attention to
19 Page eight thereof, Subdivision C.

20 More specifically, the language which talks
21 about "The company has a right to take action against
22 an employee for failure to comply with reasonable
23 general plant rules."

24 Do you see that in the contract, sir?

25 A Yes.

1 Q Now, directing your attention to Respondent's
2 Exhibit #2 for identification, can you describe that
3 document to us, sir?

4 (Handing.)

5 A Yes.

6 This is a copy of the rules and regulations
7 which we have used for 20 years or more and which
8 we distribute to our employees when they are hired and
9 then again from time to time, you know, on an annual
10 or every two years.

11 Q Is every employee given a copy of those rules
12 and regulations?

13 A Yes, to my knowledge, every employee is given
14 a copy of these rules and regulations.

15 Q Now, I want to specifically call your attention,
16 sir, to Respondent's Exhibit 2 for identification,
17 and more particularly Page four and Subdivision 21
18 which says:

19 "Absent for more than a 48-hour period or
20 longer without notifying the company."

21 A Yes.

22 Q Has that particular rule been in effect --
23 was it in effect at the time of Mr. Stallworth's
24 hiring and at the time of the layoffs in December and
25 January?

1 A Yes.

2 Q Did -- strike that.

3 MR. KATZ: I offer it in evidence.

4 JUDGE FRIEDMAN: Any objection?

5 MS. KINNEY: No objection.

6 JUDGE FRIEDMAN: Received.

7 (The above-mentioned was received
8 and marked as Respondent's Exhibit
#2 into evidence.)

9 BY MR. KATZ:

10 Q Now, did you hear Mr. Stallworth's testimony
11 that shortly after the receipt by him of General
12 Counsel's Exhibit #6, the January 8th letter, he
13 came to the plant?

14 Did you hear him so testify?

15 A Yes.

16 Q Did you talk to him at that time?

17 A Yes.

18 Q In January of 1975, were you in Florida --
19 I'll withdraw that question.

20 Did you hear Mr. Stallworth testify that in
21 January of 1975, you were in Florida, someone told
22 him?

23 A Yes.

24 Q Were you in fact in Florida?

25 A No.

1 Q Now, you had a conversation after Mr. Stallworth
2 came in to see you with reference to General Counsel's
3 Exhibit #6?

4 A Which one is that?

5 Q That's this document (Indicating).

6 A Yes.

7 Q All right.

8 Where did that conversation take place?

9 A In the plant, I believe.

10 Q In the where?

11 A In the plant.

12 Q Whereabouts, to the best of your recollection?

13 A In the vicinity of the foreman's room.

14 Q Where is that?

15 A That's in the Die-Cut Department.

16 Q Was anybody else present?

17 A No one was party to the conversation.

18 Q Who opened this conversation, Mr. Stallworth
19 or yourself?

20 A Mr. Stallworth.

21 Q What did he say to you at the time?

22 A He wanted to know why he was presumed to have
23 quit.

24 Q And what did you say to him at the time?

25 A I told him that he failed to come to work on

1 January the 6th, you know, as directed.

2 Q Did you say anything else to him or did he
3 make a statement then to you?

4 A I didn't say anything else to him at the time.

5 Q What else did he say then, if anything?

6 A He didn't say anything.

7 Q How long did he stay there?

8 A It was just -- it was just a short discussion.
9 I don't think it was a minute.

10 MR. KATZ: May I just have his answer
11 read back of what he said to Stallworth, please.

12 (Record read.)

13 BY MR. KATZ:

14 Q In this conversation, did Mr. Stallworth deny
15 that he had been directed to come back to work on
16 January 6th, 1975?

17 A No.

18 Q Did he make any statement with respect to
19 whether or not he had been directed to come back to
20 work on January the 6th, 1975?

21 A No.

22 Q Now, in connection with this case, you were
23 interviewed by someone from the labor board.

24 Is that correct?

25 A Yes.

1 Q Did they ask you questions?

2 A Yes, they did.

3 Q And you gave answers?

4 A Yes, I did.

5 Q He wrote down the answers?

6 A Yes.

7 Q Now, in addition to writing to Mr. Stallworth
8 on January 6th, 1975, did you write to the union?

9 A Yes.

10 We notified the union that Mr. Stallworth is
11 assumed to have quite.

12 MR. KATZ: May we have this marked for
13 identification, please, as Respondent's Exhibit #3.

14 (The above-mentioned was received
15 and marked as Respondent's Exhibit
#3 for identification.)

16 BY MR. KATZ:

17 Q I show you copies of Respondent's Exhibit #3
18 for identification, and ask you whether the original
19 of this, January '75, was sent to the union?

20 (Handing.)

21 A Yes, yes, it was.

22 MR. KATZ: I offer it in evidence.

23 JUDGE FRIEDMAN: Any objection?

24 MS. KINNEY: No objection.

25 JUDGE FRIEDMAN: Received.

(The above-mentioned was received and marked as Respondent's Exhibit #3 into evidence.)

JUDGE FRIEDMAN: May I see it, please, Mr. Katz?

MR. KATZ: Yes, your Honor; I'm sorry.

(Handing.)

BY MR. KATZ:

Q Now, after this conversation with Mr. Stallworth in January 1975, did you have another conversation with him after that date?

A Yes.

Q About when, to the best of your recollection, did that take place?

A It must have been March 3rd or 4th, the 3rd or 4th of March.

Q And what were the circumstances under which you had that conversation with him in the beginning of March of 1975?

A Oh, the company had recalled some people to work in early March.

Word had gotten to Mr. Stallworth.

He came in to go to work.

The supervisor said that he had no card for him. I reminded the supervisor that he was no longer with the company, that he was assumed to have quit.

1 Q Just a minute.

2 When you say he had no card, would you describe
3 what kind of card you are talking about?

4 A Weekly timecard, payroll record.

5 Q In other words, if an employee is to report,
6 there is a timecard near the time clock form?

7 A That's right.

8 Q What then happened?

9 A I told the supervisor that in January that he
10 failed to return to work and that he was assumed
11 to have quit.

12 MS. KINNEY: Who is the supervisor, if
13 we could have a name?

14 THE WITNESS: Ed McCloud.

15 A That he had no seniority and that he could
16 not return to work at this time.

17 Q Did you have any conversation with Mr. Stallworth
18 at that time?

19 A No.

20 MR. KATZ: May I just have a moment or
21 two?

22 I seem to have misplaced my homework of
23 last night.

24 JUDGE FRIEDMAN: Surely.

25 Off the record.

(Short recess taken at 12:10 P. M.)

JUDGE FRIEDMAN: Back on the record.

BY MR. KATZ:

Q Did you hear Mr. Stallworth's testimony in which he said, in words or substance, that you had told him that he had given you a hard time, therefore, you no longer have a job for him?

A Yes, I heard that.

Q Did you make any such statement to Mr. Stallworth, or to anybody else?

A No.

Q Did you ever say to Mr. Stallworth that he had given you a hard time?

A No.

Q When Mr. Stallworth came in to see you, did you hear him testify that he said:

John, you gave me a hard time before?

A No.

Q Did you hear him so testify?

A Yes, I'm sorry.

Q Did you in fact say anything, Mr. Serwitz, that resembled those words?

A No.

Q Now, you testified that you had, on December 11th, after it was reported to you that he had not signed

1 this paper, that you had gone out to talk to him.

2 Did you explain to him, Mr. Serwitz, anything
3 when you spoke to him?

4 A. Yes.

5 I told him that he didn't have to sign the
6 waiver and if he didn't sign it, he would return to
7 work on January the 6th.

8 Q. Did you have any discussion with him about
9 whether he understood the nature of the paper, or not?

10 A. Yes.

11 I tried to explain the nature of the paper.

12 Q. No, no.

13 Did you have any discussion? You said yes.

14 Now, please tell us what you said to him
15 about the paper?

16 A. Oh.

17 I asked him if he understood what the waiver
18 was.

19 Q. What did he say?

20 A. He said he didn't want to sign away any of
21 his rights.

22 Q. And then what did you say to him?

23 A. I said, "You're not signing away any rights,
24 you're signing away one provision of the contract
25 which calls for sharing of the work, and it's only for

1 this time."

2 Q What did he say to that?

3 A He said he doesn't want to sign away any of
4 his rights, he wants his rights.

5 Q Did you say anything to that?

6 A No.

7 Q Do you recall Mr. Stallworth testifying in this
8 case that you did not tell him to report to work on
9 January 6th, 1975?

10 A Yes, I do.

11 Q Did you or did you not tell him to report to
12 work on January 6th, 1975?

13 A Yes, I did.

14 Q When did you tell him that?

15 A During that conversation when I had heard that
16 he didn't sign the waiver and I went out to talk to him.

17 Q Is that the one of December the 11th, 1974?

18 A Yes.

19 Q In your conversation with Mr. Stallworth in
20 December, on December 11th, 1974, did you have any
21 discussion with him about unemployment insurance and
22 about the other men, that is, with respect to that
23 document?

24 A Yes.

25 Q What do you recall your telling Mr. Stallworth

1 about that?

2 A. I told him that the waiver was the idea of the
3 men themselves, not the company's and that I could
4 see where it would be beneficial to the men because
5 they could start to draw unemployment insurance
6 immediately instead of coming back to work on the
7 sixth for one week and then being on layoff.

8 Q. What, if anything, did Mr. Stallworth say to
9 you when you told him that?

10 A. He said, "I want to work."

11 Q. Did you hear Mr. Nelson testify this morning
12 about what he says he overheard part of the
13 conversation between yourself and Mr. Stallworth?

14 A. Yes.

15 Q. Did you hear Mr. Nelson say that he heard
16 Mr. Stallworth say to you that other guys with less
17 seniority were kept on but he was being let go?

18 Did you hear Mr. Nelson say that to us today?

19 A. Yes.

20 Q. Did Mr. Stallworth say that to you in the
21 December 11th, 1974 conversation?

22 A. No.

23 Q. Is it a fact that people with less seniority
24 in his classification were kept on and he was let go?

25 A. Not in his classification, no.

1 Q Did you hear Mr. Stallworth testify this
2 morning that in his conversation with you on December
3 the 11th, 1974, he made reference to the fact that he
4 didn't see why he should be the one to be laid off
5 when his wife is expecting a baby?

6 Did he make any such statement to you? •

7 A No.

8 Q Did you hear him testify this morning that in
9 that same conversation, that you told him that you
10 didn't give a damn whether he worked or not?

11 Did you hear him so testify this morning?

12 A Yes.

13 Q Did you, in words or in substance, say that
14 to him?

15 A No.

16 Q That is, on December the 11th, 1974.

17 Did you?

18 A No.

19 Q Did you, in words or substance, at any time
20 tell him that?

21 A No.

22 Q Did there come a time when you received a call
23 from the union with respect to Mr. Stallworth having
24 contacted the union about his matter?

25 A Yes, I got a call from the union.

1 Q And what did they tell you?

2 A They asked me what the facts were of why I
3 wrote the letter.

4 MS. KINNEY: Could we identify who he's
5 speaking to?

6 MR. KATZ: Yes.

7 BY MR. KATZ:

8 Q Whom were you speaking to, do you recall?

9 A John Genetta (phonetic), Vice President of
10 the Union.

11 MR. KATZ: May we go off the record for
12 a moment?

13 JUDGE FRIEDMAN: Yes.

14 Off the record.

15 (Discussion off the record.)

16 JUDGE FRIEDMAN: Back on the record.

17 BY MR. KATZ:

18 Q What did you tell him about the letter and
19 the -- and Stallworth's not reporting to work on
20 January 6th, 1975?

21 A I told him that Mr. Stallworth was supposed to
22 come back to work on January the 6th, 1975 and that
23 he didn't report to work for a period exceeding 48
24 hours.

25 Q Did he make any statement to you then?

1 A. No.

2 Q. Thereafter, did the union contest his quitting
3 on the date, as per the letter?

4 A. No.

5 Q. When for the first time after the January 8th,
6 1975 letter was received and, that Stallworth came in
7 to see you, did it come to your attention that
8 Mr. Stallworth was claiming that he wasn't recalled on
9 January 6th, 1975?

10 A. Could you repeat it again, please?

11 JUDGE FRIEDMAN: Read it back,
12 Mr. Reporter.

13 (Record read.)

14 MS. KINNEY: Objection.

15 BY MR. KATZ:

16 Q. Did you understand the question?

17 MS. KINNEY: I have an objection.

18 MR. KATZ: I'll withdraw it, then.

19 JUDGE FRIEDMAN: All right.

20 The question is withdrawn.

21 BY MR. KATZ:

22 Q. Let me ask you this:

23 I show you from Board's Exhibit -- from
24 General Counsel's Exhibit #1, the original copy of
25 the charge signed by Mr. Stallworth on May 16th, 1975

1 wherein he states that "Since on or about January 6th,
2 1975, the company failed to recall him from layoff."

3 Do you see that?

4 A. Yes.

5 Q. Did the company fail to recall him to work
6 on January 6th 5?

7 A. No.

8 He was supposed to report back to work on
9 January 6th, 1975, with the rest of the plant.

10 Q. And when was he told to come back on January
11 the 6th, 1975?

12 A. I told him myself on December the 11th.

13 Q. Of 1974?

14 A. Of 1974, yes.

15 Q. I see.

16 MR. KATZ: I have no further questions.

17 MS. KINNEY: Could I have a few
18 minutes, please?

19 JUDGE FRIEDMAN: Yes.

20 Off the record.

21 (Discussion off the record.)

22 JUDGE FRIEDMAN: Back on the record.

23 We'll recess for lunch at this time.

24 We'll return at 1:15.

25 (Time noted: 12:15 P. M.)

* * *

(P. M. Session started at 1:25 P. M.)

JUDGE FRIEDMAN: The hearing will be
in order.

Mr. Serwitz, please resume the witness
stand.

Let me remind you, sir, you are still
under oath.

THE WITNESS: Yes, sir.

JUDGE FRIEDMAN: You may proceed with
your cross-examination, Miss Kinney.

MS. KINNEY: All right.

CROSS-EXAMINATION

BY MS. KINNEY:

Q Mr. Serwitz, did the company explain the
form to workers?

A The waiver form?

Q Yes.

A Yes.

Q When did they explain it to them?

A Did you say to the workers?

A Yes.

A No, the company did not explain the waiver form
to the workers.

I explained the waiver form to John Stallworth.

MS. KINNEY: I would move to have the last

1 part of the answer stricken as not responsive.

2 I asked him to explain -- nevermind.

3 I take it back.

4 JUDGE FRIEDMAN: All right.

5 BY MS. KINNEY:

6 Q How many workers does the company have? .

7 A. Approximately 150 at this point.

8 It fluctuates.

9 Q How many departments do you have?

10 A. Six departments.

11 Q Six?

12 A. I think it's six, yes.

13 Q Do you have a foreman for each department?

14 A. No.

15 MS. KINNEY: No further questions.

16 MR. KATZ: I have no further questions.

17 JUDGE FRIEDMAN: All right.

18 I guess that's it.

19 You may step down, sir.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 JUDGE FRIEDMAN: I presume we're waiting
23 for our next witness.

24 MR. KATZ: We told him to be here as
25 close to two as possible.

1 JUDGE FRIEDMAN: All right.

2 I guess the only thing we can do then
3 is just sit tight and hope that he will show up.

4 Off the record.

5 (Discussion off the record.)

6 JUDGE FRIEDMAN: Back on the record.

7 Whereupon, EDWARD McCLOUD, is called as
8 a witness and having been first duly sworn by the
9 Administrative Law Judge, was examined and testified
10 as follows:

11 DIRECT-EXAMINATION

12 BY MR. KATZ:

13 Q Would you please state your full name?

14 A Edward McCloud, 31 Brookfield, Centereach,
15 Long Island.

16 Q Mr. McCloud, how long have you been employed
17 by Columbia Corrugated, the company involved in this
18 matter?

19 A About four and a half years.

20 Q All right.

21 In --

22 A That's the second time.

23 Q In December of 1974 and in January of 1975,
24 what position did you hold with the company?

25 A Plant Superintendent.

1 Q Do you know Mr. Stallworth?

2 A Yes, I do.

3 Q I show you a paper which we have identified
4 for the record as General Counsel's Exhibit #4, dated
5 December 11th, 1974.

6 (Handing.)

7 A Yes.

8 Q On December 11th, 1974, did you do anything
9 with copies similar to that in connection with
10 Mr. Stallworth?

11 A Yes.

12 I gave him one.

13 Q How many copies did you give him?

14 A It was in an envelope.

15 I don't recall how many copies there were.

16 Q Do you recall whether there was more than one
17 or not?

18 A I think there was three in there.

19 Q What did you tell him, if anything?

20 A To sign it back to me as fast as he could
21 after he read it.

22 Q Anything else?

23 A No.

24 I gave it to him and I walked away because I
25 had others to give it to.

1 Q Later that same day, Mr. McCloud, did you ask
2 him for the letter?

3 A Yes.

4 Q And do you recall what he said to you?

5 A He said he wasn't going to sign it.

6 Q Did you say anything to him?

7 A No, I didn't.

8 Q What did you do?

9 A I just walked away from him.

10 Q Now, sometime thereafter -- and I think, if
11 my recollection serves me correctly, that it was about
12 the beginning of March of 1975 -- Mr. Stallworth
13 testified that some co-workers told him that you had
14 told them to get in touch with him.

15 A I told them, yes, to get in --

16 Q Now, first, is it about March, is that the
17 period?

18 A Yes, we were starting to get a little busy.

19 Q What did you tell these workers?

20 A I just told them that Stallworth was not doing
21 anything, you know, to come on into the plant and
22 see Charlies.

23 Q Did you say anything else or was that it?

24 A Oh, no.

25 Q That was it?

1 A Yes.

2 Q Okay.

3 And then he came into the plant?

4 A Yes.

5 Q And then what did you do when you saw him
6 come into the plant?

7 A Well, I told him to wait in the cafeteria
8 until he saw Charlies.

9 Then I saw Charlie.

10 Q Yes?

11 A And --

12 Q Was Stallworth there when you spoke to Charlie?

13 A Oh, no, no.

14 Q Okay.

15 A He was in the cafeteria.

16 Q Okay.

17 And you had a conversation with Mr. Serwitz,
18 Charlie?

19 A Yes, I did.

20 Q All right.

21 Well, what did Mr. Serwitz tell you?

22 A Well, we --

23 Q What was the conversation about?

24 A Along the lines that he had quit his job
25 because he didn't return to work on January the 6th and

1 if he came back, he would have to come back as a
2 new employee.

3 Q Did you go outside and then have a
4 conversation with Mr. Stallworth?

5 A Yes.

6 I told him exactly that.

7 Q Don't say exactly.

8 Tell us, as best as you can remember, what
9 you told Mr. Stallworth.

10 A Well, being that he hadn't returned on
11 January the 6th --

12 Q Yes.

13 A -- he had given up his job, we assumed he
14 had quit, and that if he had wanted to come back he
15 would come back as a new employee as a headsetter.

16 Q Then what happened?

17 Did he say anything?

18 A No.

19 He got quite mad.

20 I just turned around and walked away from him.

21 MR. KATZ: You may inquire.

22 JUDGE FRIEDMAN: Before that, if he had
23 said yes, what would have happened that day?

24 Would you have asked him to go to work?

25 THE WITNESS: Then I would have gone back

1 to Charlie and told him exactly what Mr. Stallworth
2 said.

3 BY MR. KATZ:

4 Q Let me ask you this:

5 Would there have been work available for him
6 on this early part of March?

7 A Oh, yes.

8 We were getting busy at the time.

9 MR. KATZ: Thank you.

10 No further questions.

11 You may inquire.

12 MS. KINNEY: No questions.

13 JUDGE FRIEDMAN: No questions?

14 MS. KINNEY: No, no questions.

15 JUDGE FRIEDMAN: All right.

16 You may step down.

17 (Witness excused.)

18 MR. KATZ: May we go off the record, sir?

19 JUDGE FRIEDMAN: Yes, we can go off the
20 record.

21 (Discussion off the record.)

22 JUDGE FRIEDMAN: Back on the record.

23 We'll recess at this time until tomorrow
24 morning inasmuch as there are no more witnesses
25 available today and General Counsel wants to examine the

1 records that she has subpoenaed from the Respondent.

2 All the reservations that have been
3 insofar as examination on these documents that are
4 concerned, any motions that counsel for the Respondent
5 wants to make and all of these other matters are
6 reserved by the parties so that we're in a position
7 where the General Counsel has not rested except for --
8 has rested completely except for whatever these
9 documents, plus whatever Respondent wants to put on
10 in answer to whatever you ask with regard to these
11 documents.

12 Is that right?

13 MR. KATZ: Yes.

14 MS. KINNEY: Yes.

15 JUDGE FRIEDMAN: With that, we'll
16 adjourn until ten o'clock tomorrow morning.

17 (Time noted: 2:40 P. M.)

18 * * *

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twenty-Ninth Region

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In the Matter of: :
COLUMBIA CORRUGATED CONTAINER CORP. : Case No.
-and- : 29-CA-4358
JOHN W. STALLWORTH, An Individual. :

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16 Court Street
Brooklyn, New York
Wednesday, February 4, 1976

The above-entitled matter came on for further
hearing, pursuant to adjournment, at 10:00 o'clock, a.m.

BEFORE:

MORTON D. FRIEDMAN,
ADMINISTRATIVE LAW JUDGE

APPEARANCES:

ELIZABETH KINNEY, Esq. 16 Court Street, Brooklyn,
New York, appearing on be-
half of the Counsel for the
General Counsel.

CHARLES R. KATZ, Esq. 360 Lexington Avenue, New
York, New York, appearing
on behalf of the Employer.

I N D E XWITNESSDIRECT CROSS REDIRECT RECROSS

John Danetra

183

Charles Serwitz
(Continued)

190

192

John W. Stallworth
(Continued)

194

197

Dorothy Stallworth

206

211

EXHIBITSFOR IDENTIFICATIONIN EVIDENCE

(No exhibits.)

P R O C E E D I N G S

JUDGE FRIEDMAN: All right, on the record.

MS. KINNEY: Your Honor, off the record the parties have reached a stipulation which I will read at this time.

In the normal course of events, John Stallworth, would have been recalled on March 3rd 1975.

JUDGE FRIEDMAN: All right.

MR. KATZ: I have no objection to the stipulation, but I would like the record to also indicated that pursuant to the subpoena served upon Respondent Employer, the records were made available yesterday afternoon to Counsel for the General Counsel, which records contain the names of all employees in the Printing Department, their dates of hire, their job classifications, their rates of pay, their dates of termination, or layoff, as well as their period of recall, if any.

JUDGE FRIEDMAN: All right, thank you, Mr. Katz.

Is there anything further from General Counsel?

MS. KINNEY: Mr. Katz, are you agreeable to the stipulation?

MR. KATZ: Yes.

MS. KINNEY: General Counsel rests its case in chief.

JUDGE FRIEDMAN: Any motions?

1 MR. KATZ: I have some motions, but I would like
2 to call one short witness.

3 May I reserve my motions until after he he's
4 been called?

5 JUDGE FRIEDMAN: Yes.

6 MR. KATZ: All right.

7 Would you come up please?

8 Whereupon,

9 JOHN DANETRA

10 was called as a witness by and on behalf of the Employer
11 and, having been first duly sworn by Judge Friedman
12 was examined and testified as follows:

13 JUDGE FRIEDMAN: Please be seated and give your
14 full name and address to the Reporter, sir.

15 THE WITNESS: John Danetra, D-a-n-e-t-r-a, Glen
16 Bay Lane, Glenhead, New York 11541.

17 JUDGE FRIEDMAN: You may proceed, sir.

18 MR. KATZ: All right.

19 DIRECT EXAMINATION

20 Q (By Mr. Katz) Mr. Danetra, you are here today
21 pursuant to a subpoena served upon you?

22 A Yes, sir.

23 Q In what capacity are you employed by Local 381,
24 the Union which has a contract with Columbia Corrugated
25 Container Corp.?

1 A I'm a vice president. business agent.

2 Q Did you hold such positions in November of 1974
3 through March or April of 1975?

4 A Yes.

5 Q Do you know John Stallworth?

6 A Yes.

7 Q Is that the gentleman sitting next to the Counsel
8 for the General Counsel? (Indicating)

9 A Yes.

10 Q I would like to call your attention to --

11 Mr. Witness, I show you what has been marked in
12 evidence as General Counsel's Exhibit No. 6, a letter
13 from Columbia Corrugated to Mr. Stallworth, advising
14 that they assumed that he quit.

15 (Handing document to witness.)

16 I would also like to show you a document which
17 has been marked as Respondent's Exhibit No. 3 in evidence
18 which is a letter of January 8th. 1975 addressed to the
19 Union from the Company, in essence, stating that Mr.
20 Stallworth was deemed to have quit because he did not
21 report to work.

22 (Handing document to witness.)

23 After January 8th, 1975, did Mr. Stallworth have
24 a conversation with you concerning the matter referred
25 to in that letter?

1 A Yes, sir, on the telephone, not in person.

2 Q To the best of your recollection, when was it
3 that you had that telephone conversation with him?

4 A It was -- I really can't say, late January, February,
5 around that time.

6 I really can't say.

7 Q All right.

8 Now, would you please tell us the substance of
9 that conversation?

10 A Well, Mr. Stallworth called and said that he
11 had received a letter from the Company stating that he
12 was no longer employed by them, because he had not re-
13 turned from vacation, I think that it was, and he wanted
14 to know if the Company was right in doing this thing to
15 him.

16 I asked him if they had -- if they had gotten
17 in touch with him and told him to come back and he said
18 no, that they have not gotten in touch with him and
19 told him to come back, and then, after I spoke to him
20 for a while, he did say that Charley did tell him to
21 come back verbally, but he was waiting to get it in
22 writing.

23 He didn't think that it was sufficient enough to
24 have it verbally.

25 He wanted it in writing.

1 Q And what did he then say to you?

2 A Well, he said that if it was a matter of bringing
3 it out, that he would deny Charley ever said it.

4 Q He would deny that Charley said what?

5 A That he should return to work on a certain date.
6 It was after vacation time.

7 I don't remember the date.

8 MR. KATZ: No further questions.

9 JUDGE FRIEDMAN: Just for the record, who is
10 "Charley"?

11 THE WITNESS: Charley Serwitz.

12 JUDGE FRIEDMAN: All right.

13 Cross-examination.

14 MS. KINNEY: May I have one moment, your Honor?

15 JUDGE FRIEDMAN: Yes.

16 MS. KINNEY: No questions.

17 JUDGE FRIEDMAN: No questions?

18 MS. KINNEY: No.

19 JUDGE FRIEDMAN: All right, you may step down.

20 Thank you very much, sir.

21 (Witness excused.)

22 MR. KATZ: May we go off the record for a moment?

23 JUDGE FRIEDMAN: Off the record.

24 (Discussion off the record.)

25 JUDGE FRIEDMAN: On the record.

1 MR. KATZ: Pursuant to an off the record conver-
2 sation it appears that the parties can stipulate that
3 with respect to the layoff of December 13th. 1974,
4 there were 29 employees involved.

5 The reason that I want the stipulation. is that
6 we were talking around 25 as being the number

7 The exact number is 29.

8 JUDGE FRIEDMAN: Is this in the department?

9 MR. KATZ: No, this is in the entire plant. 29.

10 JUDGE FRIEDMAN: All right.

11 MR. KATZ: And that the 29 composes the following:

12 In the Corrugated Department, nine; in the Die-Cut
13 Department, 11; in the Printing Department, four; in
14 the Finishing Department, three; and in the Shipping
15 Department, two.

16 JUDGE FRIEDMAN: Do you so stipulate?

17 MS. KINNEY: Yes.

18 MR. KATZ: All right.

19 The parties are further prepared to stipulate
20 that John Stallworth was an employee in the Printing De-
21 partment.

22 JUDGE FRIEDMAN: Do you so stipulate?

23 MS. KINNEY: I so stipulate.

24 MR. KATZ: Can we now stipulate that Stallworth's
25 classification was headsetter?

1 MS. KINNEY: Yes.

2 MR. KATZ: Can we further stipulate that his
3 seniority dated from January 10th, 1972?

4 MS. KINNEY: Yes.

5 MR. KATZ: All right.

6 Now, can we go off the record for a minute, please?

7 JUDGE FRIEDMAN: Off the record.

8 (Discussion off the record.)

9 JUDGE FRIEDMAN: On the record.

10 MR. KATZ: I believe that the parties are pre-
11 red to stipulate that in the Printing Department the
12 following employees were in it, with their certain
13 dates of hire, that the payroll records list certain
14 classifications, and the payroll records indicate whether
15 or whether or not they were laid off as follows:

16 Walter Halpin, H-a-l-p-i-n, date of hire 1/6/59,
17 three-color press, not laid off.

18 John Liebl, L-i-e-b-l, date of hire, 8/28/61,
19 lead man, pressman, not laid off.

20 Aaron Mosely, M-o-s-e-l-y, date of hire, 7/15/64,
21 two-color press, not laid off.

22 John Valentine, 2/2/67, three-color press, not
23 laid off.

24 Allen Travis, A-l-l-e-n Travis, T-r-a-v-i-s,
25 1/15/68, two-color press, not laid off.

1 Hudson Strother, S-t-r-o-t-h-e-r, 4/28/69, two-
2 color press, not laid off.

3 Jerry, J-e-r-r-y Barnes, B-a-r-n-e-s, 8/11/69.
4 headsetter, not laid off.

5 Robert Halpin, H-a-l-p-i-n, 5/3/70. headsetter,
6 not laid off.

7 Amarcimenes, A-m-a-r-c-i-m-e-n-e-s, Salcedo,
8 S-a-l-c-e-d-o, 5/17/71, headsetter, laid off January 6,
9 1975, that is the week ending of that, recalled date
10 March 3rd, 1975.

11 John Stallworth, 1/10/72, headsetter, laid off
12 12/13/74, recalled date subject to dispute in this case.

13 JUDGE FRIEDMAN: All right.

14 MR. KATZ: Justiniano, J-u-s-t-i-n-i-a-n-o,
15 Paulino, P-a-u-l-i-n-o, 2/16/72, floor helper, laid off
16 December 13, 1974, recalled date 3/10/75.

17 Lucien, L-u-c-i-e-n, Phillippe, P-h-i-l-l-i-p-p-e.
18 7/18/72, press helper, laid off date 12/13/74, recalled
19 date 3/3/75, did not return.

20 William Manteufel, M-a-n-t-e-u-f-e-l, 8/14/72,
21 four-color press, not laid off,

22 Fred Nelson, 10/9/72, three-color press, not laid
23 off.

24 Walter Nier, Jr., N-i-e-r, Jr., 2/5/73, two-color
25 press, not laid off.

1 Dieuseul, D-i-e-u-s-e-u-l, Bernard, B-e-r-n-a-r-d,
2 6/11/73, press machine helper, laid off December 13,
3 1974, recalled date 3/3/75.

4 Samuel Thompson, 8/20/74, headsetter, laid off
5 November 20, 1974, recalled date 3/18/75.

6 The payroll records show that he did not return.

7 MS. KINNEY: I'm willing to stipulate that the
8 data read off is what the Company's records indicate.

9 JUDGE FRIEDMAN: All right.

10 Thank you very much.

11 MR. KATZ: Can we go off the record?

12 JUDGE FRIEDMAN: Off the record.

13 (Discussion off the record.)

14 JUDGE FRIEDMAN: Back on the record.

15 MR. KATZ: I recall Mr. Serwitz.

16 JUDGE FRIEDMAN: You are still under oath, Mr.

17 Serwitz.

18 MR. SERWITZ: Yes.

19 Whereupon,

20 CHARLES SERWITZ

21 was called as a witness by and on behalf of the Employer
22 and, having been previously duly sworn, was examined
23 and testified further as follows:

24 REDIRECT EXAMINATION

25 Q (By Mr. Katz) Sir, starting with the week of

1 December 2nd, 1974, in connection with the layoffs
2 which you previously testified some took place in
3 November and some took place in December, could you tell
4 us for the workweek commencing December 2nd, 1974 how
5 many hours Mr. Stallworth worked?

6 A Yes.

7 Mr. Stallworth worked 36-1/4 hours in the week
8 commencing December 2nd.

9 Q Now, your information that you are giving us is
10 taken from what?

11 A The payroll records at my office.

12 Q Now, during that week of December 2nd, in the
13 entire plant, were there other employees who worked less
14 than the normal workweek?

15 A Yes.

16 There were roughly 80 to 85 percent of the per-
17 sonnel at that time worked less than 40 hours.

18 Q And 40 hours is the normal workweek?

19 A Yes.

20 Q Now, for the following week, the week commencing
21 December 9th, what was the number of hours that Mr.
22 Stallworth worked?

23 A Mr. Stallworth worked 37 hours that week.

24 Q And for that same week, throughout the plant,
25 what was the percentage of employees that worked the

1 reduced workweek?

2 A Roughly the same, 80 to 85 percent worked less
3 than 40 hours.

4 Q And 40 hours is the normal workweek?

5 A Yes.

6 Q And that information is taken from your books
7 and records?

8 A And the payroll records, yes.

9 Q Now, the next week, the week of December 16th,
10 Mr. Stallworth was laid off; is that correct?

11 A Yes.

12 Q The week of the 23rd, and the week of the 30th
13 are the two weeks that the plant was closed; is that
14 correct?

15 A Yes, that is correct.

16 Q And January 6th, 1975 is the week which he was
17 to return to work as you previously testified?

18 A Yes.

19 MR. KATZ: No further questions.

20 RECROSS-EXAMINATION

21 Q (By Ms. Kinney) Mr. Swerwitz, are the records
22 here?

23 A No, the records are not.

24 Q Did you look at the records when you got the
25 information?

1 A I looked at the records prior to this trial,
2 but I got the information this morning from my controller
3 at his home.

4 Q When the weather is bad, do employees some times
5 work less than 40 hours week?

6 A When the weather is --

7 Q Yes.

8 A Yes, like with severe snowstorms we allow them
9 to go home earlier, if they want.

10 Q So all of the information that you testified about,
11 you got on the telephone from your controller this
12 morning; is that right?

13 A This specific information about Stallworth, yes.

14 Q What about your percentage figures?

15 A I got -- I gathered those prior to this trial.

16 Q Where are those records?

17 A They are at my office.

18 MS. KINNEY: No further questions.

19 MR. KATZ: No questions.

20 JUDGE FRIEDMAN: You may step down, sir.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 MR. KATZ: Respondent rests now.

24 JUDGE FRIEDMAN: Any rebuttal?

25 MS. KINNEY: Yes, there will be.

1 I would like to have a five-minute break.

2 JUDGE FRIEDMAN: Yes.

3 Off the record.

4 (A recess was taken.)

5 JUDGE FRIEDMAN: On the record.

6 MS. KINNEY: John Stallworth, step up, please.

7 Whereupon,

8 JOHN W. STALLWORTH

9 was recalled as a witness, having been previously sworn,
10 was examined further and testified as follows:

11 JUDGE FRIEDMAN: You are still under oath,
12 Mr. Stallworth.

13 You may be seated.

14 THE WITNESS: Thank you.

15 REDIRECT EXAMINATION

16 Q (By Ms. Kinney) Mr. Stallworth, after you re-
17 ceived word from your co-workers that McCloud wanted you,
18 and you went out to the Company, would you please tell
19 us what you said to Mr. McCloud and what he said to you
20 at that time?

21 A Yes.

22 I went in and spoke to him, and at that time, he --
23 I was looking for my punch card so that I could punch in
24 so that I could start to work, and I didn't see it, and
25 I asked him about it and he said wait, and he left as

1 he was going to get one.

2 MR. KATZ: I move to strike the words "as if he
3 was going to get one."

4 JUDGE FRIEDMAN: Yes, I agree with you.

5 A (Continuing) Mr. McCloud left and came back
6 and told me that he had made a mistake.

7 Q Did he say anything else that you can recall or
8 did you say anything else?

9 A I asked him how he made a mistake.

10 He tell me to come to work and I came here, and
11 I don't have a card, and he said, "Well, I don't know,
12 you have to speak to Charley," Mr. Serwitz, Charley.

13 Q Was there any mention in the conversation about
14 coming to work as a new employee?

15 A No.

16 Q When, in relationship to this conversation did
17 you speak to Mr. Serwitz?

18 A This was in the first part of March that I asked
19 him about the card, and he told me that I refused to
20 sign the letter, gave him a hard time.

21 As far as he's concerned, I no longer have a job
22 with the Company.

23 MR. KATZ: As I understand the question, it wasn't
24 what was said, the question was when did this take place.

25 Q (By Ms. Kinney) When did you speak with Mr. Serwitz,

1 before or after the conversation with Mr. McCloud?

2 A After the conversation with Mr. McCloud.

3 JUDGE FRIEDMAN: You mean after, on the same day?

4 THE WITNESS: On the same day.

5 Q (By Ms. Kinney) Now, after you received the
6 letter of January 8th, did you call the Union?

7 A I spoke with the Union.

8 Q Do you remember when you called them?

9 A It was during the same week, the same day.

10 Q All right.

11 A The same day.

12 Q Do you know who you spoke to at the Union?

13 A By voice, I don't, but he said that he was the
14 vice president of the Union.

15 Q Do you know his name?

16 A He said John.

17 I'm not sure.

18 Q Would you tell us what you said to him and what he
19 said to you in that conversation?

20 A Yes.

21 I explained to him that I was laid off from work
22 the 13th of December, one week prior to the regular shut-
23 down, year-end shutdown.

24 I did not get any word or message to return to
25 work, and how can he assume that I quit my job, and in

1 returns, he asked me did I send a grievance letter into
2 the Union, and I said no.

3 I told him no, so in returns I spoke with the
4 Attorney and he in turn advised me about how to go about
5 it and get this matter straightened.

6 Q Now, in your conversation with the Union repre-
7 sentative, who identified himself as John, did you say
8 anything to him about Charley telling you to come back?

9 A Telling me to come back?

10 Q Yes.

11 A No.

12 Q Did you say anything to him like telling you
13 verbally was not enough?

14 A No.

15 Q Did you say anything to him like if it was a matter
16 of bringing it out, that you would deny that Charley had
17 said that?

18 A No.

19 MS. KINNEY: No further questions.

20 MR. KATZ: Could I have his affidavit, please?

21 (Ms. Kinney handing document to Mr. Katz.)

22 RECROSS-EXAMINATION

23 Q (By Mr. Katz) Now, Mr. Stallworth, do you re-
24 member my asking you prior to today, in this case, were
25 you familiar with a grievance form, do you know that

1 there were grievances under the contract.

2 Do you remember me asking those questions?

3 A Yes.

4 Q And you said that you didn't know anything about
5 it; is that correct?

6 A Yes.

7 Q Now today you're telling us for the first time
8 that when you spoke to the Union vice president, which
9 was a few days after January 8th, 1975, he asked you
10 did you send a grievance letter into the Union and you
11 said that you did -- is that right?

12 A Yes, I said that.

13 Q So in January, 1975, you knew that you had a
14 right to file a grievance against what you claim what
15 Mr. Serwitz did was wrong against you; is that correct?

16 A Yes, I would say that that is right.

17 In returns of the grievance that I didn't do,
18 I wrote a letter from home.

19 That was what I call a grievance.

20 Q Yes, that was the letter of March 26th that we
21 talked about the other day, isn't that right?

22 Isn't that the letter?

23 A Yes, I believe.

24 Q You believe or isn't that so?

25 Let me show you, sir, isn't this the letter of

1 March 26th that you are now referring to that you wrote
2 to the Union?

3 (Handing document to the witness.)

4 A This is the letter.

5 Q And didn't you tell us the other day that the
6 Union said to write them a letter putting in writing
7 what your trouble was, isn't that why you wrote this
8 letter?

9 A Yes, it is.

10 Q Now, may I have that, please?

11 A Yes.

12 (Witness handing document to Mr. Katz.)

13 Q Today you're telling us that in your conversation
14 with Mr. McCloud, you asked him where your timecard was.

15 Do you remember saying it today?

16 A In March, right.

17 Q Yesterday, and the day before when you were
18 asked about what you said to Mr. McCloud and what he
19 said to you, you didn't mention one word about that time-
20 card, isn't that correct?

21 Isn't that true?

22 A No.

23 Q It's not true, or it isn't true?

24 A No.

25 Q Did you mention in your testimony the first day,

1 when Ms. Kinney, Counsel for the General Counsel asked
2 you to give us the conversation in March between your-
3 self and McCloud, didn't you then say nothing about
4 this timecard?

5 A I did.

6 Q You did say it?

7 A And in returns -- well, he walked away and come
8 back and he told me that he made a mistake.

9 Q Well, Mr. Stallworth, today is Wednesday,
10 February 4th.

11 This case opened two days ago on February 2nd,
12 1976.

13 Do you remember that?

14 A Yes, I remember.

15 Q You were the first witness on that day.

16 A Yes.

17 Q And that afternoon, do you remember Ms. Kinney,
18 Counsel for the General Counsel asking you to relate
19 the conversation that you had with Mr. McCloud at the
20 beginning of March 1975?

21 Do you remember her asking you to tell us about
22 that?

23 A Yes.

24 Q And you told us about it at that time?

25 A Yes.

1 Q And then, later that same day I asked you
2 questions and asked you to tell us what happened in
3 your conversation with Mr. McCloud.

4 Do you remember that?

5 A Yes.

6 Q Now, isn't it a fact that in both when Miss
7 Kinney asked you and when I asked you, you made no
8 reference whatsoever to your asking McCloud where is the
9 timecard; isn't that true, that this morning is the
10 first time that you mentioned it?

11 A No.

12 Q It's not true?

13 MRS. KATZ: May we get a stipulation that his
14 affidavit of June 4, 1975, in which he relates the
15 conversation that he had with Mr. McCloud, that the
16 affidavit contains no reference whatsoever to the time-
17 card as he's testifying this morning?

18 MS. KINNEY: Yes.

19 Q (By Mr. Katz) Isn't it true, Mr. Stallworth,
20 that you never spoke to Mr. McCloud or Mr. Serwitz
21 about any of the complaints that they had against you,
22 and that you never acted as a spokesman for the other
23 workers.

24 Isn't that true?

25 A Excuse me?

1 MR. KATZ: Miss, would you please repeat that
2 question to him?

3 (The pending question read by the Reporter.)

4 A The problem against me, I did not question them
5 as why they were doing this and acting as a shop steward,
6 I did not act as one with the co-workers.

7 Q But isn't it true -- I'm sorry for interrupting
8 you, do you want to say anything else, or are you
9 finished?

10 A I'm finished.

11 Q All right.

12 Isn't it true that you never acted as a spokesman
13 for the other workers in the place?

14 A When they -- McCloud --

15 Q Can't you answer that yes or no, sir?

16 'You either did or you didn't.

17 A I did.

18 Q You did act as a spokesman for the other workers?

19 A Relating to Mr. McCloud and Mr. Serwitz?

20 Q Relating to -- I'll withdraw the question.

21 First you said that you never spoke to Mr. McCloud
22 or Mr. Serwitz about their complaints against you.

23 Are we clear about that?

24 Am I right?

25 A What day are you referring to now?

1 Q Well, you said that you never spoke to them.

2 That would mean any date.

3 Didn't you say in this affidavit, and I show it
4 to you, sir, look at it.

5 On June 4th, "I never spoke to McCloud or Serwitz
6 about their complaints."

7 Do you want to see that in the last paragraph?

8 (Handing document to the witness.)

9 A I see what you are saying.

10 Q Yes, I'm not -- isn't that what you told the
11 Board Agent in June of 1975, that you never spoke to
12 McCloud or Serwitz about their complaints against you?

13 Isn't that true?

14 A That's what is here (indicating).

15 Q No, but isn't that a true statement, what's there?

16 A No.

17 Q You're saying that your statement that you signed
18 is not true?

19 Is that what you are telling us?

20 A You're twisting things around to say it in your
21 own way.

22 MR. KATZ: Excuse me?

23 JUDGE FRIEDMAN: He said, "You're twisting things
24 around to say it in your own way."

25 MR. KATZ: Thank you.

1 Q (By Mr. Katz) May I have your statement, sir?

2 A Yes.

3 (Witness handing document to Mr. Katz.)

4 Q Have you just now read the last part of the
5 June 4th, 1975 affidavit that you gave to Mr. Howard
6 Weinrich of the Labor Board?

7 Did you read it just a few minutes ago?

8 A Yes.

9 Q And in it, didn't you say "I never spoke to
10 McCloud or Serwitz about their complaints"?

11 Didn't you say that to Mr. Weinrich in June of
12 1975 when he was questioning you?

13 A That was on the paper.

14 Q Sir, I didn't ask you what's on the paper.

15 I'm asking you whether or not in June, 1975,
16 when Mr. Weinrich was interviewing you about the charge
17 that you had filed in this case, whether you did not
18 tell him, "I never spoke to McCloud or Serwitz about
19 their complaints."

20 Did you tell it to Mr. Weinrich, or did you not?

21 A Obviously yes.

22 Q Now, did you not also tell Mr. Weinrich, at that
23 time, that you not act as a spokesman for the other workers?

24 Didn't you also tell him that?

25 A No, I did not.

1 Q You did not tell it to him?

2 A No.

3 I told him, in that respect, that as far as this
4 paper signing waiving rights, that I spoke with the
5 other guys that supposedly had the same paper to sign,
6 that I would not sign, that's the reason for it.

7 Q Now, Mr. Stallworth, I'm not referring to the
8 paper, and the incidents which you've just said.

9 I'm just asking you whether or not, in June 1975,
10 when Mr. Weinrich of the Board was questioning you,
11 you didn't, or did not tell him that you -- that you
12 did not act as a spokesman for the other workers.

13 Are you telling me that you didn't say that, or
14 that you did say that?

15 A I did say that.

16 Q You did say that?

17 A Yes.

18 MR. KATZ: No further questions.

19 JUDGE FRIEDMAN: Any redirect?

20 MS. KINNEY: No.

21 JUDGE FRIEDMAN: All right, you may step down, sir.

22 THE WITNESS: Yes.

23 JUDGE FRIEDMAN: Thank you.

24 (Witness excused.)

25 JUDGE FRIEDMAN: Is there anything further?

1 MISS KINNEY: Dorothy Stallworth.

2 JUDGE FRIEDMAN: Mrs. Stallworth, would you please
3 raise your right hand.

4 Whereupon,

5 DOROTHY STALLWORTH

6 was called as a witness by and on behalf of the National
7 Labor Relations Board and, having been first duly sworn
8 by Judge Friedman, was examined and testified as follows:

9 JUDGE FRIEDMAN: Please be seated.

10 Give your full name and address to the Reporter,
11 please.

12 THE WITNESS: Dorothy M. Stallworth, 969
13 Gates Avenue, Apartment 204, Brooklyn, New York.

14 DIRECT EXAMINATION

15 Q (By Ms. Kinney) Now, Mrs. Stallworth, did there
16 come a time after January 8th, 1975, when it came to
17 your attention that your husband was calling the Union?

18 A Yes.

19 Q Would you tell us what happened that day?

20 A Well, after talking to the Attorney General,
21 he called the Union.

22 He asked to speak to a representative.

23 MR. KATZ: I object, unless she knows of her
24 own knowledge.

25 Q (By Ms. Kinney) Were you there?

1 A I was there.

2 MR. KATZ: You were there?

3 THE WITNESS: Yes.

4 MR. KATZ: May I ask for voir dire, sir?

5 JUDGE FRIEDMAN: Well, let me see -- I'm sorry,
6 I just didn't hear the entire testimony.

7 Would you please read back the question and the
8 answer?

9 (The record was read by the Reporter.)

10 JUDGE FRIEDMAN: You may have your voir dire.
11 Wait a minute, did you hear the other end of
12 the conversation, or was it on the phone?

13 THE WITNESS: No, it was on the phone.

14 JUDGE FRIEDMAN: All right, then she can only
15 testify as to what she heard her husband say, and that's
16 all.

17 MR. KATZ: All right.

18 Q (By Ms. Kinney) What did you hear your husband
19 say?

20 A After he asked to speak to a representative who
21 came on the phone, John asked "Who am I speaking to?"

22 And the man must have said "The vice president."

23 MR. KATZ: I move to strike --

24 JUDGE FRIEDMAN: What did your husband say?

25 THE WITNESS: Well, John repeated "The vice

1 president of the Union."

2 He called off the full name, but I don't recall
3 what the name was.

4 John asked -- told him, rather, "I received a
5 letter today from Columbia Corrugated, and it stated
6 that they assumed that I quit my job because I did not
7 call within 72 hours."

8 Q (By Ms. Kinney) Do you remember anything else
9 that your husband said?

10 A And John said, I wonder -- "I want to know how
11 could they assume that I quit when I was laid off on
12 December 13th, 1974 and didn't receive any information
13 or letter, telegram or telephone call to return to work."

14 Q Did you hear --

15 MR. KATZ: I'm going to object to any leading,
16 sir.

17 JUDGE FRIEDMAN: Well, I don't know just what
18 she is getting into.

19 It sounds like it's the start of a leading question.
20 I'll sustain the objection.

21 If you want to ask "Did you hear --" and then
22 specific words, all right.

23 Q (By Ms. Kinney) Did you hear your husband say
24 anything further?

25 A Yes.

1 He said a letter -- a letter of what, and he
2 said a letter of grievance, I did not send in, and the
3 he repeated -- he said "I will send the letter in."

4 JUDGE FRIEDMAN: I will?

5 THE WITNESS: I will send the letter in, and
6 he mentioned --

7 JUDGE FRIEDMAN: When you say "he," you are
8 referring to your husband?

9 THE WITNESS: Yes, to my husband, right.

10 After the letter, he asked him when will he hear
11 from them, and he told him that he had to send the
12 letter in first and then he would get a response from
13 the Union.

14 JUDGE FRIEDMAN: I'll have to strike the last
15 of the answer.

16 Q (By Miss Kinney) Did you hear your husband say
17 anything further?

18 A He said would he get a response, and they told
19 him ye

20 MR. KATZ: I would like to strike "they told h
21 yes".

22 THE WITNESS: He repeated "yes".

23 Q (By Ms. Kinney) Do you remember hearing your
24 husband say anything further?

25 A No.

1 MS. KINNEY: Your Honor, I guess that the next
2 question that I have is one of the nature that Mr. Katz
3 would object to, and you said that you would sustain
4 the objection, so I guess that I would like to have
5 the witness excused.

6 JUDGE FRIEDMAN: Yes.

7 Would you please step outside, Mrs. Stallworth?

8 THE WITNESS: Yes.

9 (Whereupon, the witness left the hearing
10 room.)

11 JUDGE FRIEDMAN: All right.

12 MS. KINNEY: All right.

13 The question I would ask is:

14 Did you hear anything in the conversation with
15 respect to whether the notice to return should be verbal
16 or in writing.

17 MR. KATZ: Well, it's leading and it goes to a
18 very serious matter in this case.

19 JUDGE FRIEDMAN: I would have to sustain that.

20 In any event, I couldn't give much credence to
21 any testimony was given in response to a leading question,
22 anyway.

23 It wouldn't have any weight, or very little.

24 MS. KINNEY: Okay.

25 Then the next question I know is not objectionable.

1 JUDGE FRIEDMAN: Please call her back.

2 (The witness resumes the stand.)

3 Q (By Ms. Kinney) Have you related all that you
4 heard Mr. Stallworth say in the conversation?

5 A Pardon?

6 Q Have you related to us all that you heard your
7 husband, Mr. Stallworth say in the conversation?

8 A Yes, I believe that I said everything.

9 Q I'm sorry, I didn't hear the answer.

10 A Yes, I believe so.

11 Q Were you in the room the whole time that he was
12 on the telephone?

13 A Yes.

14 MS. KINNEY: No further questions.

15 MR. KATZ: May I just have one moment?

16 I'm looking for a paper.

17 JUDGE FRIEDMAN: Yes.

18 CROSS-EXAMINATION

19 Q (By Mr. Katz) Now, this conversation that you
20 are telling us about, you say that it is the day that
21 your husband received the January 8th letter from the
22 Company; is that correct?

23 A Yes.

24 Q And you are clear in your mind that you heard
25 your husband repeating something about a letter of

1 grievance; is that correct?

2 A Yes.

3 Q Now, when your husband had this conversation in
4 January, had he already gone to the Attorney General,
5 or was that after?

6 A No, my husband didn't do that, I did.

7 Q Was that after this conversation?

8 A No.

9 Q That was before this conversation?

10 A Yes, right.

11 It was the same day.

12 Q You know, don't you, that your husband wrote a
13 letter to the Union on March 26th, 1975?

14 A Yes.

15 MR. KATZ: No further questions.

16 JUDGE FRIEDMAN: Any redirect?

17 MS. KINNEY: No.

18 JUDGE FRIEDMAN: All right, you may step down.

19 Thank you, Ma'am.

20 (Witness excused.)

21 JUDGE FRIEDMAN: Is there anything further?

22 MS. KINNEY: I would move to amend the pleadings --

23 I would move to conform the pleadings to the proof.

24 MR. KATZ: I have no objection if it really goes
25 to such formal things as date and so on.

1 JUDGE FRIEDMAN: As to minor matters, such as
2 clerical errors or typographical errors, of course,
3 but certainly not as to any of the allegations.

4 MS. KINNEY: I understand that.

5 I have a brief closing statement to make.

6 JUDGE FRIEDMAN: All right.

7 MR. KATZ: Before Ms. Kinney makes a closing
8 statement, we still do not have on the record as to
9 whether or not you have anything further.

10 MS. KINNEY: There is nothing further.

11 MR. KATZ: Thank you.

12 Before she made a closing statement, your Honor,
13 I wanted to make a statement.

14 JUDGE FRIEDMAN: Go ahead, sir.

15 By the way, Mr. Katz, she had indicated that be-
16 fore, that she had nothing further.

17 Go ahead, sir.

18 MR. KATZ: Yes.

19 At this time, the Respondent moves to strike that
20 part of Paragraph 13 of the complaint which states that
21 the Employee, Stallworth, was discharged because "Said
22 employee joined and assisted Local 381," on the ground
23 that there isn't any proof whatsoever in this record of
24 that.

25 And I also move to strike, from the same paragraph,

1 the latter part which says "Because said employee
2 engaged in other concerted activity for the purpose of
3 collective bargaining and mutual aid and protection,"
4 which leaves, therefore, if my motion is granted the
5 part that just talks about his refusal to sign the
6 written stipulation which we have had testimony on.

7 This record is completely devoid of any testi-
8 mony that A, the employee, Stallworth engaged in
9 activities after joining or assisting Local 381 or en-
10 gaged in other concerted activities.

11 JUDGE FRIEDMAN: What do you say to that?

12 MS. KINNEY: Well, I would say that Mr. Stallworth
13 was asserting his rights as an employee and as a
14 member of a Union in refusing to sign the written stipu-
15 lation waiving the contract provisions, and therefore,
16 I don't believe that that portion of the complaint should
17 be stricken.

18 I would concede that the record doesn't indicate --
19 the last portion, with respect to other concerted
20 activities, as there is -- it is not terribly well de-
21 veloped.

22 JUDGE FRIEDMAN: I think that I will strike and
23 "because said employee engaged in other concerted activity,
24 for the purpose of collective bargaining and mutual aid
25 and protection."

1 So far as the other part of the motion is con-
2 cerned, certainly I think it's a generalization,
3 assuming for the moment, that his refusing to waiver
4 the contract provisions, by interpretation, can be con-
5 sidered assisting the Local in enforcing the collective
6 bargaining agreement.

7 I will assume that perhaps it could remain.

8 I will take the balance of the motion under
9 advisement in that respect.

10 I concede a possible connection and, therefore,
11 I'm not willing to strike it at this time.

12 MR. KATZ: With respect to Paragraph 15 of the
13 complaint, I respectfully move to strike that portion
14 thereof, which alleges that the acts complained of
15 constitute a violation of Section 8(a)(3) of the Act,
16 in that, assuming arguendo, the case for the Counsel
17 for the General Counsel, there is nothing in this record
18 to indicate that the acts encouraged or discouraged
19 membership.

20 Now, where an employee engages in protected
21 concerted activity, the Board has ruled, and I think
22 that I have the case here.

23 I don't have it, sir, at the moment.

24 JUDGE FRIEDMAN: Well, I think that there is one
25 case --

1 MR. KATZ: I would like to make the point, and
2 then reserve it for citation, for my brief, that if
3 in fact an employee is engaged in a protected and con-
4 certed activity, that does not constitute a violation of
5 8(a)(3) of the Act.

6 JUDGE FRIEDMAN: No, it would have to be Union
7 activity to constitute a violation of 8(a)(3).

8 I don't know offhand whether I would decide
9 whether it was Union activity -- protected or concerted
10 activity.

11 I'll reserve decision on that.

12 However, there is a case, New York Track Rock.

13 I don't know the citation.

14 I think that it's New York Track Rock.

15 I don't know the exact set of facts but there
16 was a protest with regard to conditions which were covered
17 by the Union contract, and one single employee protested,
18 claiming that it was a contract violation.

19 I believe that the Board only held that out to
20 be only 8(a)(1), but at the present time my recollection
21 is not complete on that, and I hate to rule on your
22 motion at this time, but I know that there are cases
23 dealing with this particular problem.

24 MR. KATZ: In view of the posture of the case,
25 because the Board did not rest, because of waiting for

1 certain documents, I would like to now make a motion
2 that would have been made at the end of the Board's
3 case, and submit that, based on the case made, or sub-
4 mitted by the Counsel for the General Counsel.

5 She has not made out a prima facie case for
6 violations of the Act.

7 Now, I renew my motion that by a fair preponderance
8 of credible evidence, the Counsel for the General
9 Counsel has not sustained the allegations of the com-
10 plaint.

11 JUDGE FRIEDMAN: Reserved.

12 You can make your closing statement now, but if
13 you are going to submit a brief, you don't have to.

14 There is no necessity.

15 MS. KINNEY: I don't know now whether I'm going
16 to submit a brief or not.

17 JUDGE FRIEDMAN: All right.

18 MS. KINNEY: I just want to review briefly General
19 Counsel's position with respect to the facts, and then
20 I have a few citations with respect to the point made
21 previously.

22 This case, as we all are aware, involves an em-
23 ployee named John Stallworth, who worked as a headsetter
24 for several years for Columbia Corrugated Container
25 Corp.

1 His most recent tour of employment began in
2 January, 1974.

3 During that entire period, the Respondent had
4 a collective bargaining agreement with Local 381, with
5 the Paper Workers.

6 That contract, or at least the contract in
7 effect during the time that we are concerned with, re-
8 quired that in the event, due to business conditions,
9 layoffs became necessary, that the work available had to
10 be shared, that the Respondent also had to --

11 JUDGE FRIEDMAN: Let me ask you a question before
12 you get into that.

13 That is shared as between classifications or
14 within the same classification of employees?

15 MS. KINNEY: My understanding is that it's more
16 general than that.

17 MR. KATZ: For the record, it might be helpful --
18 I'm sorry to interrupt, the contract on Page 6 says
19 "Sharing of the work has to be within the employees within
20 the same job classification," and then there is a further
21 proviso.

22 It doesn't apply to those that have less than a
23 year's seniority.

24 JUDGE FRIEDMAN: I'll read that later.

25 It's in evidence.

1 MR. KATZ: Yes.

2 MS. KINNEY: And that the Company has two plant
3 shutdowns, one in the summer, and one in the winter,
4 and in the fall of 1974, the Company issued a notice
5 to workers, stating the dates of the winter shutdown.

6 After that notice was out, the Company decided
7 that they were going to have to lay off employees, and
8 they originally laid off all of the employees with
9 less than one year seniority.

10 That was in November.

11 Thereafter, they decided that additional layoffs
12 would be required.

13 As I understand it, there was talk with the
14 Union about developing a 30-day work schedule program
15 as provided in the contract.

16 After that, it was suggested by a Union official
17 to the Company, that some of the men would rather be
18 laid off on December 13th than to come back to work in
19 January under the work-sharing plan, so that the Company
20 then, in conjunction with the Union, I guess, prepared
21 a waiver form for the employees work-sharing rights under
22 Article 7.

23 The Company did not make an explanation of what
24 this all meant to the workers.

25 They asked the workers whether they wanted to sign

the work-sharing form.

Stallworth was asked by the foreman and then by the Company's president, Charles Serwitz, whether he would sign a waiver -- whether he would sign the form waiving his rights, waiving his rights under Article 7 of the contract, and requesting to be laid off on December 13th.

Stallworth, on each occasion, declined to sign the waiver, asserting that he would not sign to be laid off, that he wanted to work.

When he spoke to Serwitz, Serwitz advised him that all of the other workers had signed the waivers and he didn't know what to do with him since he had not signed the waiver.

Stallworth still refused to sign.

That was on December 11th.

Then, two days later, along with his pay, Stallworth is given a layoff slip, and a week's vacation pay.

Thereafter, he waits to get called back to work.

The next communication that he had from the Company is that of a letter, dated January 8th stating that he didn't come back to work on January 6th they had now figured that he had quit.

He had never been told to go back to work, so he went out to the Company, tried to find out what happened,

1 called the Union.

2 He never was able to find out why they had
3 assumed that he had quit.

4 He then received word from co-workers that the
5 plant manager, McCloud, wanted him to come back.

6 He went out to report for work, and McCloud
7 told him that it was a mistake, that he was not supposed
8 to come back.

9 Stallworth didn't understand that.

10 He went to speak to Serwitz, and Serwitz told
11 him that as far as he was concerned, since he had
12 given him a hard time about signing the waiver be-
13 fore the layoff, he couldn't work there, there was no
14 work for him.

15 It is General Counsel's contention that Stallworth
16 was terminated on January 8th because he had given
17 the Respondent difficulty about the waiver slip, and
18 his refusal to sign a slip waiving his contractual
19 rights.

20 This legal modification was confirmed by
21 Stallworth's later conversation with Serwitz, in
22 which Serwitz told him that he had given him a hard
23 time previously, and that was why there was no work
24 for him.

25 It is our contention that an individual can

1 assert his rights under a collective bargaining
2 agreement and that it violates Section 8(a)(1) and (3)
3 to terminate an employee for so doing.

4 Cases in this area include Modern Motor Express,
5 Inc., 129, NLRB 1433, H. C. Smith Construction, 174,
6 NLRB 1173 and Interboro Contractors, 157, NLRB 1295,
7 enforced 888, Fed, Second 495, Second Circuit, 1967.

8 I should note that in the Interboro Case,
9 they did not reach the 8(a)(3) issue.

10 They said that since they found a violation on
11 8(a)(1), that was it.

12 They were not going to talk about 8(a)(3).

13 Such authority would apply here, because
14 Stallworth was refusing to waive his contract rights,
15 was in essence attempting to enforce the term of the
16 collective bargaining agreement.

17 In the alternative, General Counsel contends
18 that even if it is assumed, arguendo, that Stallworth
19 was deemed to have quit on January 6th, nevertheless,
20 the Respondent violated Section 8(a)(1) and (3) by
21 refusing to re-employ Stallworth later as evidenced
22 by Stallworth's statement to him when he went to see
23 about returning to work, that he was no longer con-
24 sidered an employee because he had given him a hard
25 time before the layoff.

1 In this respect, I would site you to Hunter
2 Saw Division 202, NLRB 230.

3 JUDGE FRIEDMAN: S-a-w?

4 MS. KINNEY: Yes, S-a-w.

5 This case was decided, by way of analogy, it's
6 directly on the same point, but it involved a dis-
7 criminatory failure to re-employ an employee because
8 he filed a grievance.

9 Therefore, General Counsel would urge that you
10 find a violation of Section 8(a)(1) and (3), in
11 terminating Stallworth, and thereafter, failing to
12 reinstate him.

13 JUDGE FRIEDMAN: All right.

14 MR. KATZ: I intend to file a brief, and, there-
15 fore, would reserve my comments for the brief.

16 I would just like to make a few brief obser-
17 vations.

18 JUDGE FRIEDMAN: Yes.

19 MR. KATZ: In listening to the closing state-
20 ment by Counsel for the General Counsel, I assume that
21 there was no defense put in by the Respondent.

22 All that she was doing or attempting to do was
23 to recuse what she thinks Mr. Stallworth testified
24 to.

25 In our brief, we intend to go into these

1 discrepancies, very seriously, with a comparison of
2 what he testified to under oath, and his affidavit
3 when he was examined, his statements that he made on
4 the first day, and the elaborations that he brought in
5 on the second day, and the further elaborations on
6 the third day.

7 As to the question of what credibility Mr.
8 Stallworth is entitled to, we will go into that,
9 showing his evasiveness, the way that he answered
10 questions and things of that nature which are things
11 that have to be determined.

12 We have legal propositions which I think are
13 best left to the brief.

14 Apparently Counsel for the General Counsel now
15 realizes that the case as to whether or not on January
16 6th, as alleged by the charge and as it is reiterated
17 in the complaint, the Company failed on that date to
18 recall him from layoff, and that is what this complaint
19 of this case is about.

20 That is what we tried in this case, and at this
21 late date, to now bring in an alleged 8(a)(3), based
22 on the fact that in March he was denied employment,
23 is not within the confines of the complaint, the
24 pleadings, what we have been trying in this case, and
25 I will develop that and there are many cases before the

1 Board on that question.

2 One final note.

3 The cases dealing with concerted activity cited
4 by General Counsel, to my recollection -- and when I
5 write my brief I'll go into detail -- deal, as I re-
6 call, in cases where more than one employee was in-
7 volved and/or the type of activity that he was engaged
8 in was for the benefit of other employees in the plant.

9 We don't have that fact, and I think that is
10 one of the critical factors in this case.

11 Now, the issue of credibility, we have brought
12 to this hearing those people who are involved in this
13 situation, and we think that based on the entire case,
14 that the Board has not made out or that General Counsel
15 has not made out the case on a fair preponderance,
16 and in fact, I think that the Respondent here has
17 adequately proved that there is no basis to the com-
18 plaint here.

19 JUDGE FRIEDMAN: Thank you.

20 I think with that, the case is closed.

21 I'll give you a date for filing of briefs.

22 March 8th, in Washington.

23 MR. KATZ: Is that the most that you can give us?

24 JUDGE FRIEDMAN: At this time, yes, Mr. Katz.

25 MR. KATZ: All right.

1 JUDGE FRIEDMAN: I would suggest that if you
2 need more time, to either wire or write or phone the
3 Chief Judge in Washington.

4 MR. KATZ: May I just go off the record for a
5 minute?

6 JUDGE FRIEDMAN: Sure.

7 Off the record.

8 (Discussion off the record.)

9 JUDGE FRIEDMAN: On the record.

10 Before we close the record, gentlemen, I would
11 like to state that the possibility of settlement is
12 always open, and I would like you, if possible, to
13 pursue that between now and the brief date or the date
14 that I issue a decision.

15 Is there anything further from either party?

16 MS. KINNEY: No, your Honor.

17 MR. KATZ: No.

18 JUDGE FRIEDMAN: Then, in that case, thank you.

19 The hearing is closed.

20 MS. KINNEY: Thank you.

21 MR. KATZ: Thank you.

22 (Whereupon, at 11:45 o'clock A.M. the
23 hearing was closed.)
24
25

226 a

FORM NLRB-801 (2-67)		Form Approved Budget Bureau No. 64-R001.12	
UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER			
INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.		DO NOT WRITE IN THIS SPACE Case No. <u>24-CA-4358</u> Date Filed <u>5/16/75</u>	
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer Columbia Corrugated Container Corp.		b. Number of Workers Employed 200	
c. Address of Establishment (Street and number, city, State, and ZIP code) 300 Michael Drive, Syosset, Long Island 11791		d. Employer Representative to Contact Charles Serwitz	e. Phone No. 516 WAL-4700
f. Type of Establishment (Factory, mine, wholesaler, etc.) Factory		g. Identify Principal Product or Service Corrugated containers	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.			
2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.) Since on or about January 6, 1975, the above-named company has failed to recall from layoff John W. Stallworth, a headsetter, because of his concerted activities on behalf of his co-workers and because of his refusal to waive his rights under the collective bargaining agreement between the above-named company and Folding Box, Corrugated Box and Display Workers Local No. 381 United Paperworkers International Union, AFL-CIO, a labor organization.			
By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.			
3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number) John W. Stallworth			
4a. Address (Street and number, city, State, and ZIP code) 969 Gates Avenue, Apt 204, Brooklyn, New York 11221			4b. Telephone No. 452-4227
5. Full Name of National or International Labor Organization of which it is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)			
6. DECLARATION			
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.			
By <u>John W. Stallworth</u> (Signature of representative or person filing charge)		An Individual (Title, if any)	
Address <u>969 Gates Avenue, Apt 204</u> <u>BROOKLYN, New York 11221</u>		<u>452-4227</u> (Telephone number)	<u>May 16, 1975</u> (Date)
WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)			

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

COLUMBIA CORRUGATED CONTAINER CORP.

and

Case No. 29-CA-4358

JOHN W. STALLWORTH, An Individual

COMPLAINT AND NOTICE OF HEARING

It having been charged by John W. Stallworth, an individual, herein sometimes called Stallworth, that Columbia Corrugated Container Corp., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 29, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by Stallworth on May 16, 1975, and served by registered mail upon Respondent on or about May 16, 1975.

2. Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

3. At all times material herein, Respondent has maintained its principal office and place of business at 300 Michael Drive, in the Village of Syosset, County of Nassau, State of New York, herein called the Syosset plant, where it is, and has been at all times material herein, engaged in the manufacture, sale and distribution of corrugated shipping containers, displays and related products.

4. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business operations, manufactured, sold and distributed at its Syosset plant, products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from said plant in interstate commerce directly to states of the United States other than the State of New York.

5. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. Folding Box, Corrugated Box and Display Workers Local No. 381, United Paperworkers International Union, AFL-CIO, herein called Local 381, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

7. Charles Serwitz is, and has been at all times material herein, the president of Respondent, acting on its behalf, and an agent thereof.

8. On or about September 1, 1974, Respondent and Local 381 executed, and since that date, have maintained and enforced, a collective bargaining agreement relating to the hire, tenure and other terms and conditions of employment of the employees of Respondent.

9. On or about December 11, 1974, Respondent, by Charles Serwitz, its president and agent, requested of its employee, John W. Stallworth, that Stallworth sign a written stipulation, waiving certain provisions of the collective bargaining agreement between Respondent and Local 381, described above in paragraph 8, relating to layoffs and seniority.

10. On or about December 11, 1974, Respondent's employee, John W. Stallworth, refused to sign the written stipulation described above in paragraph 9, at the request of Respondent.

11. On or about January 8, 1975, Respondent discharged its employee, John W. Stallworth.

12. Since the date of the discharge of the employee, as described above in paragraph 11, Respondent has failed and refused to reinstate, or offer to reinstate, said employee to his former or substantially equivalent position of employment.

13. Respondent discharged, and thereafter failed and refused to reinstate, its employee, John W. Stallworth, as described above in paragraphs 11 and 12 because said employee joined and assisted Local 381 and because said employee refused to sign the written stipulation waiving certain provisions of the collective bargaining agreement between Respondent and Local 381 relating to layoffs and seniority, as described above in paragraphs 9 and 10, and because said employee engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection.

14. By the acts described above in paragraphs 11, 12 and 13, and by each of said acts, Respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

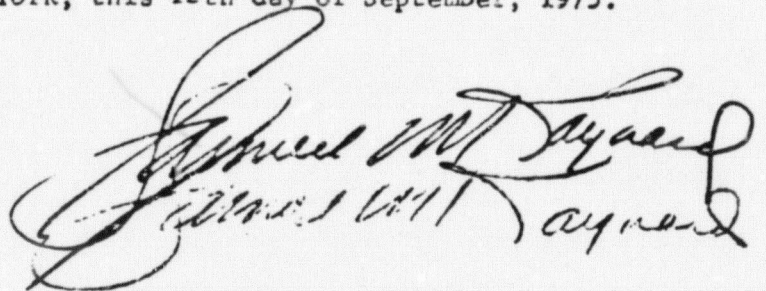
15. By the acts described above in paragraphs 11, 12 and 13, and by each of said acts, Respondent discriminated, and is discriminating, in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

16. The acts of Respondent described above in paragraphs 11, 12 and 13, occurring in connection with the operations of Respondent, described above in paragraphs 2 through 5, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free

PLEASE TAKE NOTICE that on the 11th day of November, 1975 at 10:00 a.m. at 16 Court Street, fourth floor, in the Borough of Brooklyn, City and State of New York, and on consecutive days thereafter until concluded, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement Of Standard Procedures In Formal Hearings Held Before The National Labor Relations Board In Unfair Labor Practice Cases, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so, all the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York, this 12th day of September, 1975.



Samuel M. Kaynard
Regional Director, Region 29
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE
NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS
PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMEND

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut, or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing, and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D. C. (or in cases under the San Francisco, California branch office of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

COLUMBIA CORRUGATED CONTAINER CORP.

and

Case No. 29-CA-4358

JOHN W. STALLWORTH, An Individual

Elizabeth Kinney, Esq., of Brooklyn,
NY, for the General Counsel.Charles R. Katz, Esq., of New York, NY,
for the Respondent.

DECISION

Statement of the Case

MORTON D. FRIEDMAN, Administrative Law Judge: This case was heard on February 2, 3, and 4, 1976, upon a complaint issued by the Regional Director for Region 29, of the National Labor Relations Board on September 12, 1975, which complaint was based upon a charge filed on May 16, 1975, by John W. Stallworth, an individual, herein called Stallworth or the Charging Party. The complaint alleges, in substance, that the Respondent, Columbia Corrugated Container Corp., herein called the Respondent or the Company, violated and is violating Sections 8(a)(3) and (1) of the National Labor Relations Act, herein called the Act, by discriminatorily discharging Stallworth and refusing to reinstate him to his former or substantially equivalent position because Stallworth refused to sign a written waiver of certain provisions of the collective-bargaining agreement between the Respondent and Folding Box, Corrugated Box and Display Workers Local No. 381, United Paper Workers International Union, AFL-CIO, herein called the Union.

The Respondent, in its duly served answer and amended answer, admits certain allegations of the complaint, but denies the commission of any unfair labor practices and affirmatively pleads that the Board should defer the matters with which this case is involved to arbitration.

At the hearing herein, the parties were given full opportunity to be heard, to present evidence and make oral argument. After the close of the hearing herein, the parties submitted briefs.

Upon the entire record herein, 1/ and upon my observation of each witness appearing before me, and upon due consideration given to the contentions and arguments and positions of the parties in their respective briefs, I make the following:

5

Findings of Fact

I. The Business of the Respondent

10

The Respondent, a New York corporation, maintains its principal office and place of business in the village of Syosset, county of Nassau, State of New York, where it is engaged in the manufacture, sale, and distribution of corrugated shipping containers, displays and related products. During the year immediately preceding the issuance of the complaint herein, a representative period, Respondent manufactured, sold, and distributed at its Syosset, New York plant, products of a value in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from said plant directly to customers in states of the United States other than the State of New York.

15

20

It is admitted, and I find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

25

II. The Labor Organization Involved

Folding Box, Corrugated Box and Display Workers Local No. 381, United Paper Workers International Union, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

30

III. The Unfair Labor Practices

A. The Facts

35

1. The contract provisions involved, the Company's rules, and the layoff

40

Stallworth originally began working for the Respondent in 1965, but left to go into military service. He returned to Respondent's employ sometime thereafter, but subsequently quit. On January 10, 1972, Stallworth returned to Respondent's employ. Thus, his seniority and latest period of employment would be computed from that date. The Respondent, as noted above, is in the business of manufacturing corrugated boxes and packaging. Among the several departments in Respondent's plant is the Printing Department in which Stallworth

45

50

1/ There being no opposition, the Respondent's motion to correct the transcript is granted in all respects.

worked in the classification of headsetter. During Stallworth's employment with the Respondent he was a member of, and represented by, the Union.

5 The Respondent and the Union have had a collective-bargaining relationship for a period of some 20 years. Their most recent collective-bargaining agreement, effective September 1, 1974, to September 15, 1977, contains the following provision in Article VII:

10 When it becomes necessary to lay-off any employee due to slack of business, the Company shall confer with the Shop Delegate in order to attempt to share the available working time as equally as practicable among the employees in the same job classification */
15 working for the Company at least 1 year prior to any such layoff. Should a layoff due to slack of business continue beyond 30 days, then permanent layoffs shall be based on seniority. No permanent layoff, or layoff of a week or
20 more shall be made without 3 working days' prior notice to the affected employee, if the affected employee, has had one year or more of service.

25 Additionally, the Respondent published and maintained and republished for a number of years, and distributed to each employee, its Rules and Regulations, among which are listed possible causes for discharge, a violation of any of which may result in immediate discharge. 2/ Among these causes for discharge is No. 21, "Absence for more than a 48-hour period or longer without notifying the Company."

30 In addition to all of the foregoing, it has been customary for the Respondent to have two plant shutdowns each year, one during the summer period and the other normally at the end of the year during the Christmas holiday season. In accordance with this custom,
35 in October 1974 Respondent distributed to its employees a notice that the plant would be closed from December 22, 1974, through January 5, 1975, for the yearend shutdown. Shortly after the notice to the employees concerning the yearend shutdown was distributed, Charles Serwitz, president of the Respondent, realized that it would be necessary
40 to "go into a layoff program." Thereafter, the Respondent began to lay off individuals on approximately November 15. Every employee laid off in November had less than 1 year's seniority.

45 However, business continued to fall off and the Respondent's officials realized that they would have to go further than laying off merely the 1 year people and would have to make additional layoffs. In order to conform to the above quoted section of the collective-bargaining agreement regarding the sharing of work, the Respondent realized that it would have to go into a work sharing program for at
50 least 30 days.

*/ Underlining supplied.

2/ Underlining supplied.

In order to put this program into effect, the Respondent determined the number of individuals who would have to be placed on layoff status in order to reduce the staff to the number that would be needed to operate the business as it was at that point. They determine to fix the number to be laid off at approximately 50 or so of the least senior people and retain approximately 25 to 29 individuals in normal work status. Accordingly, the Respondent divided the approximately 50 least senior people into two groups, according to seniority. These were the individuals who were going to share the work for the next 30 days.

As noted, the people to be placed in the work sharing program were to be divided into two groups, the 25 of whom were the least senior of the 50, and in which less senior group, Stallworth was included. It was determined that under the work sharing plan Stallworth's group would not work the week of December 16, 1974, and would have been scheduled to work the week of December 23, but, nevertheless, would not work due to the end of the year shutdown and would be rescheduled to commence work on January 6, 1975. When, how, or if this information was imparted to any of the employees in the group, which included Stallworth, is not revealed by the record.

In any event, a number of the employees evidently learned of the planned work sharing and layoff programs. As a result, the night shop steward, R.L. Ridgeway, spoke to President Serwitz and asked if the men in the least senior group, the group in which Stallworth was included, could be laid off on December 13 without returning on January 6 for a period of approximately only 1 week and then going on indefinite layoff, so that they could immediately apply for unemployment after December 13. Thus, they would benefit from their unemployment insurance and would realize more money thereby than if they were to be laid off, rehired for 1 week, and then be laid off again due to the lack of business.

Upon receiving this request, Serwitz stated that he would be agreeable to such a plan so long as the Union would agree to it, inasmuch as such a plan would directly controvert the work sharing section of the collective-bargaining agreement heretofore recited. The following evening Ridgeway reported back to Serwitz that the Union had no objection if the men had no objection.

Pursuant to the foregoing information, Serwitz called the Union and spoke to a Mr. Cianciulli, who verified what Ridgeway had told Serwitz. Cianciulli told Serwitz that the men were the only ones who could waive that part of the contract. Upon the suggestion of Cianciulli, therefore, Serwitz distributed a waiver, herein after set forth, in order to protect both the Company and the Union. The waivers were given to Ridgeway for distribution. They read as follows:

December 11, 1974

To: Columbia Corrugated Container Corporation

Dear Sirs:

I have been advised that I am being laid off after work on Friday, December 13, 1974.

Please note that I wish to waive my rights as stated in Article VII of the labor agreement between Columbia Corrugated Container Corporation and the Folding Box, Corrugated Box and Display Workers Local 381. Rather than share the work for the first 30 days, I am willing to remain on layoff until work is available and I can return.

This waiver form was given to Stallworth on or about December 11 by his supervisor, Foreman McCloud. McCloud requested Stallworth to read the waiver, sign it and return it to him. Later the same day, or possibly the following day, McCloud returned to Stallworth and asked the latter for the signed waiver. Stallworth informed McCloud that he was not going to sign the waiver. This information was imparted to President Serwitz who then approached Stallworth at the latter's work station and asked Stallworth why the latter refused to sign the waiver. Stallworth responded that he could not see any reason to sign for a layoff. Serwitz then explained to Stallworth that it was to the latter's advantage to sign the waiver and accept a layoff by reason of the increased monetary return that this action would give to Stallworth. Nevertheless, Stallworth, who was understandably upset at the idea of a layoff by reason of the fact that at that time his wife was pregnant, remained adamant and refused to sign. The conversation then turned to seniority, Stallworth maintaining that he was not the least senior man in his department. At one point during the conversation, Serwitz told Stallworth that if Stallworth did not sign the waiver Serwitz did not know what to do with him inasmuch as every other employee in Stallworth's category had signed the waiver in order to receive the benefits of unemployment compensation. 3/ Finally, Serwitz told Stallworth that he would be laid off but could return on the original return date of January 6. 4/

3/ Up to this point, all of the foregoing facts are more or less not in dispute.

4/ This verbal instruction to return on January 6 is denied by Stallworth in his testimony, he claiming that no such instruction was ever given to him. Counsel for the General Counsel contends that Stallworth's denial that he was instructed to return on January 6 is supported by the testimony of employee Fred Nelson, who was standing approximately 20 feet away during the conversation. (Contd)

On December 13, 1974, despite his protestations, Stallworth was given a layoff slip along with his pay for that week and the prior week along with a week's vacation pay. The so-called layoff slip in no way indicated when Stallworth was to return to work, but
5 was merely an identification paper to be used in applying for unemployment compensation.

It should be noted, that no where does the Respondent contend, nor is there any testimony or other evidence in the record to show,
10 that Stallworth was in any way a troublesome or incompetent employee, nor is there any evidence to the effect that Stallworth had ever been reprimanded for disobedience of any of the Respondent's rules or regulations or for producing faulty product.

Also, of some importance is testimony by Stallworth to the effect that one of the reasons he refused to sign the layoff slip was that he had more seniority than other individuals whom he claimed were not being laid off in his particular department. However, even
15 assuming that there were individuals who had less seniority in the same department than did Stallworth at the time of the layoff, there were
20 no individuals laid off who had less seniority than did Stallworth in Stallworth's job classification. In connection therewith, the collective-bargaining agreement between the Respondent and the Union which provided for layoff and work sharing stated, in effect, that
25 seniority in layoff shall be observed by department and that in the event of business slack, the work sharing shall be made as equally as practicable among employees in the same job classification. In connection therewith, at the hearing it was stipulated that Stallworth's most recent hire was on January 10, 1972, that his classification was
30 a headsetter, and that he was laid off on December 13, 1974. Further stipulated were the hiring dates and classifications of the other individuals in the department at the time of Stallworth's layoff. This stipulated matter reveals that no one in the department lower in seniority than Stallworth, with Stallworth's job classification, was
35 retained.

4/ (Contd.) However, Nelson, in testifying, was asked whether he remembered any more of the conversation after testifying that he did not hear any instruction to Stallworth to return on
40 January 6. Nelson answered that there was more to the conversation but he did not recall it. For this reason, and other reasons hereinafter set forth, I do not credit Stallworth in this respect and do credit Serwitz to the effect that he did verbally instruct Stallworth to return to work for 1
45 week on January 6, 1975.

2. Stallworth's discharge and Respondent's failure to recall or reinstate him

January 6, 1975, came and went and Stallworth did not report for work. Finally, by letter dated January 8, 1974, Serwitz, the Respondent's president, addressed a letter to Stallworth, which Stallworth duly received, stating as follows:

"Following your layoff, you were to return to work on January 6, 1975. You did not return, nor have we heard from you for a period exceeding 72 hours. Company rules call for notification within 72 hours. We therefore assume that you have quit your job."

This letter was personally signed by Serwitz. It refers to the rule heretofore set forth which stated that absence of more than 48 hours or longer without notifying the Company may result in immediate discharge.

Upon receipt of the letter, Stallworth proceeded to the Respondent's premises in order to speak to Serwitz. According to Stallworth, when he arrived at the Respondent's premises and asked to speak to Serwitz, he was told that Serwitz was not present, that Serwitz was in Florida. However, Serwitz testified that he did speak to Stallworth at that time, which was but a few days after the date Stallworth received the letter, and explained to Stallworth that the reason for the letter was that Serwitz had told Stallworth in December to report for work on January 6 inasmuch as Stallworth would not sign the waiver offered to him. 5/

5/ Stallworth's testimony with regard to the date and the content of the conversation with Serwitz was quite confused. On direct examination he testified, as noted above, that he was told that Serwitz was in Florida. However, on cross-examination Stallworth stated that the first time he spoke to Serwitz after the receipt of the notice that he was regarded as a quit was in February. Upon being further questioned, however, Stallworth admitted that when he received the letter he did see Serwitz and spoke to him. Finally, counsel for Respondent presented Stallworth with the latter's pretrial investigatory affidavit which stated that Stallworth had spoken to Serwitz immediately after he received the January 8 letter, in fact the day after he received the January 8 letter. Additionally, the same affidavit, shown to Stallworth upon his cross-examination, revealed that a statement wherein he had told the Board agent that Serwitz never told him to report back to work on January 6 was stricken. Stallworth maintained that he did not tell the Board agent to strike that portion. The fact that this statement was stricken would indicate that Stallworth was told to report on January 6 and this, in addition to the other factors heretofore mentioned are reasons I have heretofore credited Serwitz' testimony to the effect that he instructed Stallworth to return to work on January 6, inasmuch as Stallworth would not sign the proffered waiver.

Additionally, shortly after Stallworth received the letter informing him that the Respondent assumed that he had quit, Stallworth spoke to John Danetra, the Union vice-president. Danetra testified that Stallworth admitted to him that Serwitz had told Stallworth to report back to work on January 6. Additionally, Stallworth admitted on cross-examination, that he told the union official that he should have received a written notice to return to work and not a mere verbal notice. This would be consistent with the conclusion that Stallworth must have received a verbal notice from Serwitz to return to work on January 6. Stallworth also admitted that he was informed by a union official (it is not clear whether this was Danetra or another official) that the Respondent was acting within its contract rights to consider Stallworth a quit and that, presumably, Stallworth had no recourse insofar as the Union was concerned.

On approximately the first of March, Respondent's business had regained sufficient momentum to warrant recalling a number of the individuals who had been laid off either in December or after the week of January 6. At that time, McCloud, Stallworth's foreman, having been informed that Stallworth was unemployed, informed one of Stallworth's fellow employees to inform Stallworth to report for work at the Respondent's plant. This information was given to Stallworth, who, on the next workday, reported to McCloud for work. However, Stallworth's punchcard 6/ was not in place and Stallworth asked McCloud where the card was. McCloud then told Stallworth to wait. Finally, McCloud then evidently spoke to Serwitz and returned to the cafeteria where Stallworth was waiting. He informed Stallworth that he, McCloud, had made a mistake in calling Stallworth back. According to Stallworth, McCloud then told Stallworth, upon Stallworth asking McCloud how the mistake had been made, that Stallworth should speak to Serwitz. According to Stallworth, he later that same day did speak to Serwitz, who told him that because Stallworth had given Serwitz a hard time with regard to the refusal to sign the waiver in December, Stallworth was no longer working for the Company. 7/

6/ Punchcard evidently meant timecard.

7/ Although I have not in other respects credited Stallworth because I found his testimony to be somewhat contradictory and confusing, I credit his testimony in this respect and do not credit Serwitz' denial that he told Stallworth that the latter had given him a hard time and that, therefore, as far as Serwitz was concerned, Stallworth was no longer working for the Respondent. Serwitz, initially, on his direct examination was asked whether, after his conversation with Stallworth in January of 1975, he had another conversation with Stallworth. Serwitz answered that it must have been March 3 or 4, which would be the date that Stallworth came to report to work and was told by McCloud that the call had been a mistake. Then, after further questioning as to whether he had had a conversation with Stallworth at that time in March, Serwitz denied that he had any conversation with Stallworth at that time. Accordingly, I credit Stallworth in this respect. This is based upon the evidentiary rule that it is not uncommon "to believe some and not all of a witness' testimony." N.L.R.B. v. Universal Camera Corp., 179 F.2d 749; 754 (C.A. 2).

B. Discussion and Concluding Findings

From the contentions made at the hearing and in the briefs of counsel for the General Counsel and for the Respondent, the two basic issues in the case are (a) the usual one of credibility and (b) in this instance, whether Stallworth's refusal to sign the waiver in December constituted protected union or concerted activity, and whether he was separated from employment because of such activity.

With regard to credibility, as noted above, I have credited Stallworth only to the extent of the conversation he had with Serwitz on March 3 or 4, 1975, during which Serwitz told Stallworth that there was no work for him because Stallworth had given Serwitz a "hard time" by refusing to sign the waiver of the work sharing provision of the collective-bargaining agreement. Additionally, I have also concluded that Stallworth was informed at the time of his layoff that he was to return to work for 1 week beginning January 6. This is supported to an extent by the stipulation entered into between counsel and received in evidence that a more senior headsetter in the department in which Stallworth worked, was laid off at the end of the week of January 6. This supports Serwitz' testimony to the effect that he told Stallworth, when the latter refused to sign the waiver, that Stallworth would come back on January 6 and work for 1 week and then be laid off.

Finally, regarding the last conversation between Stallworth and Serwitz on either March 3 or 4, there remain certain inconsistencies. McCloud, the foreman, testified that he informed Stallworth that the latter could return as a new employee because there was work available. ^{8/} However, Serwitz denied that this was so and testified that there was no work for Stallworth. Accordingly, logic dictates that Stallworth was truthful in stating that Serwitz informed him that he could not work for the Respondent because of his refusal to sign the waiver.

In sum, I conclude that the original layoff of Stallworth on December 13, 1974, was lawful and necessitated by business and economic problems. I further conclude that Serwitz adhered to the Respondent's Rules and Regulations when, on January 8, 1975, he informed Stallworth that the latter was regarded as having quit by reason of his failure to report to work on January 6 and his further failure for a period of 72 hours to inform the Respondent as to the reasons therefor. I further find and conclude that Stallworth was refused employment or rehire or reinstatement or recall, as the case may be, on March 3 and 4 and was told by Serwitz that the reason for the refusal was Stallworth's initial adamancy with regard to the refusal to sign the waiver in December.

^{8/} I credit McCloud in this respect. McCloud did not learn that Stallworth had been regarded as a quit by Serwitz on January 8 until it was discovered on March 3 or 4 that there was no timecard for Stallworth.

There remains a question, however, as to whether Stallworth's failure to report to work on January 6 was the true reason for Serwitz' letter of January 8 or whether Serwitz seized upon the failure to report as an opportunity to rid the Respondent of an individual who had, indeed, given Serwitz a difficult time. I have noted, above, that there is completely lacking any record testimony or evidence that prior to the refusal by Stallworth to sign the waiver, Stallworth had ever been at any time a troublesome or an inefficient employee or one who had received any reprimand or any form of discipline whatsoever. Moreover, I note that the letter of January 8 informing Stallworth that he was considered a quit was signed not by someone lower in the Respondent's hierarchy but, rather, by Serwitz himself. If this was merely a routine application of Respondent's rules, always uniformly applied, in view of the size of the Respondent's plant, it would seem to be unusual, indeed, for the president of the firm to take the time, the trouble, and effort to write to one of the Respondent's many employess, that the employee was considered having quit. Additionally, I note the very wording of Respondent's rules and regulations, which sets forth the possible causes for discharge, states that violations may lead to discharge. This would indicate that the application of the rule was discretionary. I note also, and the record establishes, that Stallworth was the only employee who was scheduled to be laid off and was requested to sign the waiver, who refused to do so. Accordingly, by reason of all of the foregoing, I find and conclude that despite the fact that Stallworth did, indeed, violate a published rule, such violation was utilized by Serwitz as a means of retaliation against Stallworth for his refusal to sign the waiver.

Although counsel for the Respondent argues that this could not really be and that the Respondent, principally Serwitz, could not have been annoyed or frustrated with Stallworth's behavior in refusing to sign the waiver because, in fact, the waiver was for the benefit of the employees and not for the Respondent. However, there is no question that Respondent at that time was encountering economic problems and was, indeed, in position to be grateful to any employee who would voluntarily cease his employment to the extent of accepting an indefinite layoff. Further, the remark to Stallworth by Serwitz in March to the effect that Stallworth could have no work because he had given Stallworth a hard time solidifies and bolsters the foregoing conclusions. Accordingly, I find and conclude that beginning January 8, 1975, the Respondent discharged Stallworth and thereafter has refused consistently to reinstate him to his former or equivalent position by reason of Stallworth's insistence upon maintaining and enforcing his contractual rights.

I come now to the question of whether Stallworth's refusal to sign the waiver of the work sharing provision of the collective-bargaining agreement between the Respondent and the Union constituted protected concerted or union activity. Before discussing and making conclusions in this regard, however, it is necessary to dispose of the Respondent's contention that this entire matter should be deferred,

under the Collver doctrine 9/, to arbitration, inasmuch as it involves contract interpretation and also because an arbitrators award could resolve the dispute involved. I find no merit in this contention for the reason that undisputed on the record is testimony to the effect that Stallworth was told by an official of the Union that the Respondent was correct in considering that he had quit. Thus, the Union has already decided, in effect, that Stallworth could not seek redress because he was wrong in assuming that he was incorrectly regarded as having quit. I find for this reason alone that arbitration in this particular instance, pursuant to the Collver rule, would not be in conformity with Board deferral practice. 10/

We come now to the final question of whether Stallworth engaged in protected union or concerted activity. General Counsel contends that a single individual insisting upon an employer's compliance with collective-bargaining provisions is, indeed, a protected concerted and union activity. Respondent, on the other hand, contends, in effect, that the case here presented is not one where an employee insisted upon an employer's strict compliance with contractual provisions for the benefit of himself and all other employees. Rather, Respondent argues that here, the fact that all the other employees situated the same as Stallworth consented to waive the contractual rights, results in the necessary conclusion that Stallworth was acting only on his own behalf and therefore, he was acting neither in concert with other employees nor enforcing the Union's contract with the Respondent for his benefit and the benefit of the other employees involved. In support of its argument, Respondent discusses a number of the cases cited by the General Counsel 11/. Respondent seeks to show that in each of the cases relied upon by counsel for the General Counsel there was activity specifically by either more than one employee or that the subject matter the single employee was complaining about affected the rights of all other employees in the unit. Counsel for Respondent argues that in the case at bar the contractual provision Stallworth was seeking to enforce by refusing to waive, did not affect the rights of all other employees in the unit because the other employees had waived that provision.

I find the distinction made by Respondent's counsel to be a distinction without a difference. It might well be that the other employees did waive and that Serwitz did inform Stallworth to that effect. However, in one case, at least, the Board held contrary to finding of the Trial Examiner that an employee attempting to enforce the provisions of a collective-bargaining agreement, even acting alone and for himself alone, engaged in concerted activities in seeking to obtain what he viewed as the benefits of a collective-bargaining

9/ Collver Insulated Wire, 192 NLRB 837.

10/ Although there is no evidence of union hostility toward Stallworth, in view of Danetra's testimony, it would seem the Union could not, in good faith, represent Stallworth before an arbitrator. Additionally, there is no record showing that Respondent waives the time limitation provisions of the contractual grievance and arbitration procedures.

11/ N.Y. Trap Rock Corp., 148 NLRB 374; Modern Motor Express, Inc., 129 NLRB 1433 and others.

agreement during the period preceding the employees discharge. ^{12/} Furthermore, it should be noted that when Serwitz approached the Union to ask about whether employees could be laid off without sharing work, the Union refused to give him complete authority and refused to waive on behalf of the employees, but insisted that Stallworth receive individual waivers. Accordingly, there was no concession by the Union of waiver and, therefore, Stallworth's insistence upon what he considered to be his contractual right was, indeed, insistence not only on his behalf, but on behalf of all of the employees covered by the collective-bargaining agreement. And this is true even though, as testified by Serwitz, Serwitz explained that the waiver was for one time only and was not, in effect, an alteration in the terms of the collective-bargaining agreement. Accordingly, I find that the cases cited by counsel for the General Counsel are dispositive of the question here involved. I, therefore, find and conclude that although Stallworth may have caused Serwitz some problem, nevertheless, Stallworth was engaged in protected concerted and union activity when he insisted upon the employer's strict compliance with the work sharing provision of the collective-bargaining agreement. It follows, therefore, that Stallworth's discharge and the continuous refusal on the part of the Respondent to reinstate him, constituted unlawful discrimination in violation of Section 8(a)(3) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found, as set forth above, that the Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action set forth below designed to effectuate the policies of the Act.

It having been found that the Respondent discriminatorily discharged John W. Stallworth, I shall recommend that the Respondent offer Stallworth immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges. In addition, I shall recommend that the Respondent make Stallworth whole for any loss of earnings he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to that which he would normally have

^{12/} See E.E.E. Co., Inc., 171 NLRB 982, footnote 1, page 982.

earned from the date of his discharge, less net earnings during said period. Backpay shall be computed, with interest on a quarterly basis, in the manner described by the Board in F. W. Woolworth Company, 90 NLRB 289, and Isis Plumbing & Heating Co., 138 NLRB 716.

On the basis of the foregoing findings of fact and upon the entire record I make the following:

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging and then refusing to reinstate John W. Stallworth because he refused to sign a waiver of a provision of the collective-bargaining agreement between the Respondent and the Union, the Respondent has engaged in unlawful activity within the meaning of Section 8(a)(3) and (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact and conclusions of law and the entire record, and pursuant to Section 10(b) of the Act, I hereby issue the following recommended: 13/

ORDER

Respondent, Columbia Corrugated Container Corp., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Folding Box, Corrugated Box and Display Workers Local No. 381, United Paper Workers International

13/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

Union, AFL-CIO, or any other labor organization, by denying any employee work or discharging any employee because such employee insists upon the Respondent's strict compliance with the collective-bargaining agreement between the Respondent and the aforesaid labor organization, or discriminating against any employees in any manner in regard to their hire and tenure of employment or any term or condition of employment for like reason.

(b) In any other manner interfering with, restraining or coercing its employees in the exercise of their rights to form, join, or assist, or be represented by the aforesaid labor organization, or any other labor organization, to bargain collectively through representatives of their own choosing or to engage in other concerted activity for the purposes of collective-bargaining or other mutual aid or protection, or to refrain from any and all such activities except as provided in Section 8(a)(3) of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer immediate reinstatement to John W. Stallworth to his former or a substantially equivalent position without prejudice to his seniority or other rights and privileges he might enjoy, and make him whole for any loss of earnings he may have suffered by reasons of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its plant at Syosset, New York, copies of the attached notice marked "Appendix." ^{14/} Copies of said notice on forms should be provided by the Regional Director for Region 29 of the National Labor Relations Board, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof and be maintained by Respondent for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced or covered by any material.

^{14/} In the event that the Board's order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

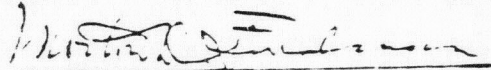
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JD-250-76

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated at Washington, D.C.

April 26, 1976



Morton D. Friedman
Administrative Law Judge

FORM NLRB-4727
(5-5)

NOTICE TO EMPLOYEES



POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT lay off, discharge, or in any other manner terminate the employment of any of our employees because such employees insist upon our full compliance with the terms and conditions of the collective-bargaining agreement between our Company and Folding Box, Corrugated Box and Display Workers Local Union No. 381, United Paper Workers International Union, AFL-CIO, or any other labor organization representing our employees, nor will we discriminate in any other manner against any of our employees for engaging in any protected union or concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to form, join, or assist or be represented by Folding Box, Corrugated Box and Display Workers Local No. 381, United Paper Workers International Union, AFL-CIO, or any other labor organization representing our employees, to bargain collectively through representatives of their own choosing, or to engage in other concerted or protected activity for the purpose of collective bargaining or any other mutual aid or protection or to refrain from any or all such activities.

WE HAVE unlawfully discharged and refused to reinstate John W. Stallworth for insisting upon full compliance with the provision of the collective-bargaining agreement with the Union and we will reinstate John W. Stallworth with backpay for any loss he may have suffered by reason of our unlawful discharge of him.

COLUMBIA CORRUGATED CONTAINER CORP.
(Employer)

Dated _____ By _____
(Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street 4th Floor, Brooklyn, New York, 11241, Telephone No. (212) 594-5246.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COLUMBIA CORRUGATED CONTAINER CORP.

and

Case 29-CA-4358

JOHN W. STALLWORTH, an Individual

DECISION AND ORDER

On April 26, 1976, Administrative Law Judge Morton D. Friedman issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,^{1/} and conclusions of the Administrative Law Judge and to adopt his recommended Order.

1/ Member Penello agrees with the Administrative Law Judge's rationale for denying Respondent's motion for deferral to arbitration. Members Fanning and Jenkins would not in any event defer to arbitration in this proceeding for the reasons set forth in their dissents in Collyer Insulated Wire, A Gulf and Western Systems Co., 192 NLRB 837 (1971), and subsequent cases.

The credited testimony reveals that employee Stallworth refused to sign a waiver of certain work-sharing rights under the collective-bargaining agreement. He was therefore scheduled to work the week of January 6, 1975, and was scheduled to be laid off for an indefinite period after that week. Stallworth did not report to work on January 6, and, on January 8, Respondent President Serwitz sent him a letter stating that, because Stallworth did not report to work or notify the Respondent, Serwitz assumed he had quit.

In March, Respondent's business had improved and, at the request of Respondent Foreman McCloud, Stallworth was called back to work. When Stallworth reported for work on March 3 or 4, 1975, Serwitz told him that, because Stallworth had given Serwitz a hard time with regard to the refusal to sign the waiver of the work-sharing provision of the collective-bargaining agreement, he no longer had a job with Respondent.

The Administrative Law Judge found that the termination of Stallworth on January 8 and the failure to reemploy him in early March constituted unlawful discrimination in violation of Section 8(a)(1) and (3) of the Act. Although we agree with his ultimate conclusions, we believe that the Administrative Law Judge placed undue emphasis on the fact that Serwitz personally signed the January 8 letter, and that Stallworth had never been reprimanded or disciplined during his employment. In the absence of any evidence of disparate treatment, these facts are of little or no significance.

However, it is clear that, although Stallworth did violate the plant rules by not notifying Respondent of his absence, the discipline for such violation is discretionary. Serwitz' statement in early March that Stallworth was no longer

working for Respondent because of the protected activity of refusing to sign the waiver demonstrates that Stallworth's failure to report for work on January 6 was not the true reason for his discharge, but was utilized as a pretext to allow Serwitz to discharge Stallworth because he had given Serwitz a "hard time." For these reasons, we agree with the Administrative Law Judge that Respondent violated Section 8(a)(1) and (3) of the Act when it discharged Stallworth on January 8, 1975, and when it refused to reemploy him on March 3 or 4, 1975.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Columbia Corrugated Container Corp., Syosset, New York, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order.

Dated, Washington, D.C. SEP 27 1976

John H. Fanning, Member

Howard Jenkins, Jr., Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

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AGREEMENT

Corrugated Box Industry
and
Folding Box, Corrugated Box and
Display Workers Local No. 381



United Paperworkers
International Union
AFL-CIO

September 1, 1974 To September 15, 1977

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AGREEMENT made as of the 1st day of September 1974 by and between

ASSOCIATION SHOPS

DELTA CORRUGATED PAPER PRODUCTS CORPORATION
ISLAND CONTAINER CORPORATION
SERVICE PAPER & CORRUGATED PRODUCTS CORPORATION
STAR CORRUGATED BOX COMPANY INCORPORATED

NON ASSOCIATION SHOPS

COLUMBIA CORRUGATED CONTAINER CORPORATION
HERITAGE CONTAINER CORPORATION
INWOOD PAPER PRODUCTS CORPORATION
MACK ALLIED CORPORATION
MANNKRAFT CORPORATION
NEW LEHIGH CORRUGATED PRODUCTS CORPORATION
NEW YORK CORRUGATED BOX COMPANY
PEQUOT MANUFACTURING CORPORATION

and their successors and assigns, (hereinafter sometimes called the Company) and the FOLDING BOX, CORRUGATED BOX AND DISPLAY WORKERS LOCAL 381, UNITED PAPER WORKERS INTERNATIONAL UNION, affiliated with the A.F.L.-C.I.O. (hereinafter sometimes called the Union).

WHEREAS, the parties hereto are desirous of promoting and maintaining harmonious relations between employer and employees and of assuring industrial peace; and

non-working foreman, shall be permitted to engage in manual work of the type covered by this Agreement, either before, during or after working hours or on Saturdays, Sundays or holidays.

New employees may be discharged by the Company at any time during the trial period which shall be thirty (30) days from the date of hiring.

Non-discrimination — The employer and the Union agree that there shall be no discrimination against any employee or applicant for employment because of race, color, creed or national origin in respect to, but not limited to, (a) hiring, placement, upgrading, layoff, transfer or demotion, (b) rates of pay or other conditions of work and (c) selection for training including apprenticeship.

ARTICLE IV—DIRECTION OF EMPLOYEES

Employees shall be responsible to the foreman of their individual departments only, and shall not be compelled to take orders from any other person on the executive staff without the approval of their respective foreman or the plant supervisor.

ARTICLE V—REPORTING INFORMATION

The Company shall upon request by the Union send to the Union periodically, a list of its employees covered by this Agreement, showing name, address, social security number, date of recent hiring, job classification and rate of job.

ARTICLE VI—LENGTH OF SERVICE

The Company shall maintain departmental seniority lists based upon the service record of the em-

ployees at each respective plant. Any employees who have or may quit or have been or may be discharged, will have lost or lose all previous accumulated seniority. Seniority shall consist of total time worked for the Company deducting any interval of unemployment, which is in excess of ninety (90) days in any one lay-off, as a result of lay-off or sickness. These lists will be posted in the various departments of the plants for reference purposes in connection with matters concerning the seniority of any employees under the terms of this Agreement.

The Company shall have the right to reduce the force of employees at any time. In all cases of lay-offs the rule of plant seniority shall prevail, that is the employee last hired in the plant shall be the first laid-off and further lay-offs shall follow the same order. Upon rehiring the inverse order of plant seniority shall prevail, that is the employee last laid off shall be the first rehired and further rehiring shall follow the same order.

When because of lay-offs or rehiring, intra-department transfers and/or job reinstatements and/or inter-departmental bumps are necessitated, plant seniority standing, subject to service and ability, in a prior classification shall prevail.

Notice of restoration in any department shall be given by the Company to the employees previously laid-off in the department forty-eight (48) hours in advance of restoration. Any such employee who does not report for work within forty-eight (48) hours after notice is given shall forfeit his place in that particular restoration, but if within a period of ten days after notice is given he so requests it,

he shall be given the same consideration at the time of the next restoration, if any. Notice shall be given to properly designated officer of the Union involved.

If any employees has followed the above procedure he shall not lose his seniority status because of a lay-off, but his continuous service record shall not be lengthened more than ninety (90) days during any lay-off period.

ARTICLE VII—BUSINESS SLACK

When it becomes necessary to lay-off any employee due to slack of business, the Company shall confer with the Shop Delegate in order to attempt to share the available working time as equally as practicable among the employees in the same job classification working for the Company at least one year prior to any such lay-off. Should a lay-off due to slack of business continue beyond thirty days, then permanent lay-offs shall be made based on seniority. No permanent lay-off, or lay-off of a week or more, shall be made without three working days' prior notice to the affected employee, if the affected employee, has had one year or more of service.

ARTICLE VIII—TEMPORARY TRANSFER

Employees may be transferred temporarily from one job or department to another. If this transfer is to a higher paid job the employee shall have the top rate for the job while working at that job if he meets normal standard and job requirements of

such job and provided total time worked on higher rated job exceeds one hour. If the transfer is to a lower paid job, the employee shall be paid at the lower rate while working on that job. But the employee shall have the option in this event of accepting or refusing the lower rated job and shall not lose any rights in his regular department as a result of his decision. If the transfer to a lower paid job is at the Company's request, then the employee shall retain his higher rate of pay.

ARTICLE IX—NEW JOBS OR VACANCY

All new jobs created, or open as a result of a vacancy shall be bulletined in the department affected for a period of two (2) days. When a new job is created or a vacancy occurs in any department, consideration shall first be given in turn, in the order of greatest seniority, to each employee in the same general classification in that department or if there is no employee in that classification, then in turn, in the order of greatest seniority, to each employee in the next lower classification in that department. If the employee with the greatest seniority so desires, he shall be given a trial of up to two (2) weeks provided that in the judgment of the management and shop steward he has sufficient ability to fill such new job or vacancy. The employee's failure to satisfactorily fill the new job or vacancy shall not penalize him with any loss of seniority. Any such employee with greater seniority than the employee to whom the trial is given, or his representative or representatives, shall upon request be advised of the reason or reasons why he was not chosen to fill the new job or vacancy.

No such new job or vacancy shall be permanently filled until any such employee with greater seniority than the employee to whom the trial is given or his representative or representatives has had an opportunity to have his case fully considered, provided such case has been properly presented within five (5) days of the time such new job or vacancy is temporarily filled.

The foregoing provisions shall not apply if the company fills the job or vacancy with an experienced employee.

ARTICLE X—OPERATING CONTROL

(a) The Company shall be the exclusive judge of all matters pertaining to the product to be manufactured, the location of the plant, the schedules of production and the methods, process, means and materials to be used.

(b) The management of the Plant and the direction of the working forces, including the right to hire, suspend, promote, transfer, or discharge for proper cause, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons is vested exclusively in the Company, provided it is not used for purposes of discrimination.

(c) The Company has the right to discharge or lay off any employee for sufficient and reasonable cause, including but not limited to, insubordination or failure to comply with reasonable general Plant rules; but such employee, the shop steward, and the Union shall be advised promptly in writing by the

Company of the reason or reasons for such discharge or lay-offs. Should it be established upon investigation that the employee has been wrongfully discharged or laid off, such employee shall be immediately reinstated in his or her former position, without loss of seniority rating, and shall be compensated for all time lost at the rate in effect on the date of discharge, lay-off or suspension.

Any dispute with reference to a discharge, lay-off or suspension shall not be subject to the grievance procedure and arbitration herein, unless the matter is taken up with the Company within forty-eight (48) hours and unless written notice thereof is given by the Union to the Company within five (5) days from the date of such discharge, lay-off or suspension.

(d) The Company reserves the right to determine and establish standards of performance for all machines and operations. Such standards shall be established on a basis of fairness and equity consistent with quality of workmanship, reasonable productivity of experienced and capable employees and the reasonable productive capacities of equipment. When any material change occurs in the methods of performing work as contemplated in the standards as established, or of producing any product, rendering such work more difficult or more simple, operations shall be re-standardized and full allowance shall be made for such change either by an increase or a decrease in the standards as the case may be. Standards established which result in unfairness or lack of equity will be discussed with representatives of the Union in order to arrange a mutually satisfactory basis for revision.

(e) Upon the introduction of any new equipment not covered by this Agreement, the wage scale and shop practices applying thereto shall be established by agreement between the Company and the Union.

ARTICLE XI—SEVERANCE PAY

1. Regular employees shall be entitled to separation pay if they are permanently separated by the Company due to a sale or liquidation of business, insolvency or bankruptcy, technological change or a geographical move outside of reasonable commuting distance.

The Schedule of Separation Pay Allowance is listed below:

LENGTH OF SERVICE FROM HIRING DATE	SEPARATION PAY
Three (3) years and over	1 week
Five (5) years and over	2 weeks
Seven and one-half (7½) years and over	3 weeks
Ten (10) years and over	4 weeks
Twelve and one-half (12½) years and over	5 weeks
Fifteen (15) years and over	6 weeks
Seventeen and one-half (17½) years and over	7 weeks
Twenty (20) years and over	8 weeks

If an employee is entitled to separation allowance as above, such separation allowance shall be paid as hereinafter provided, commencing on and after thirty (30) days of the employee's separation date, provided he has not been recalled during this thirty (30) day period.

For the purpose of this schedule, one week's pay shall be forty (40) hours of straight time pay at the employee's current rate at the time of lay-off.

2. The above payments shall be in addition to any vacation allowance to which the employee may be entitled.

3. Regular employees upon reaching sixty-five (65) years of age may be retired with a termination payment computed in accordance with the provisions of Paragraph 1, preceding.

4. An employee receiving Severance Pay, shall forfeit all seniority rights and any other privileges, rights or benefits to which such an employee may now or hereinafter be entitled.

5. An employee on being separated shall have the right to elect not to receive Severance Pay and thereby retain all seniority rights and any other privileges to which such an employee may be entitled.

6. In calculating the number of years on the Company payroll of employees who have been in the military forces, no deduction from the time actually on the Company payroll shall be made for the period of time spent by such employees while in the military forces provided such employees had attained seniority prior to the entry in the military forces and that they return to work for the Company in the manner as provided for in this Agreement.

7. The calculation of the number of years on the Company payroll for re-employed employees who had previously forfeited seniority rights, in

accordance with the terms and conditions of this Agreement, shall be based on the number of years on the Company payroll starting from the time of their up-to-date Company hiring date.

8. Severance Pay shall not be reduced by or have the effect of reducing Unemployment Compensation or any other compensation provided for under State or Federal Laws unless State or Federal Laws are to the contrary.

9. No Severance Pay shall be paid to employees discharged for just cause or voluntary resignation.

ARTICLE XII—ADJUSTMENT OF GRIEVANCE

(A) All grievances or complaints made by employees covered by this Agreement shall be taken up for adjustment as follows:

1. The aggrieved or complaining employee shall state his grievance or complaint in writing on a card furnished by the Union, which card must be signed by such employee and delivered by him to the shop steward not later than the day following the event giving rise to the grievance or complaint.

2. The shop steward shall file the card with the Company's head of department on the same day when he receives the card from the employee.

3. The shop steward, the head of the department and the Personnel Manager of the Company shall within twenty-four (24) hours thereafter meet together to endeavor to adjust the grievance or complaint.

(B) All disputes concerning the meaning or application of any of the provisions of this Agreement shall be taken up for adjustment as follows:

1. The party hereto desiring to raise the issue of the dispute shall submit the same in writing to the other party hereto.

2. A representative of the Company and a representative of the Union shall meet together to discuss and endeavor to adjust such dispute.

(C) In the event that the parties are not able by the above procedure to dispose of any grievance or complaint made by an employee, or of any dispute concerning the meaning of application of any of the provisions of this Agreement, respectively, within fifteen (15) days, then the matter shall proceed to arbitration for final determination by an arbitrator appointed by American Arbitration Association.

(D) The authority of the arbitrator shall be limited to construing and interpreting the rights of the parties under the provisions of this Agreement, with reference only to such grievances, complaints or disputes as have been presented to the Board for decision.

(E) The arbitrator shall have no power, in any respect to amend, change, eliminate or add to any of the provisions of this Agreement.

ARTICLE XIII—PENSION

The Company shall contribute to the Trustees of the Local 381 Pension Fund the sum of Ten Dollars

259

G.C. 3 ~~FOR~~ in Eu
RM 2/2/76COLUMBIA CORRUGATED
CONTAINER CORPORATION

SYOSSET - NEW YORK 11791 516 WA 1-4700

October 22, 1974

TO ALL LOCAL 381 EMPLOYEES:-

As we come towards the end of another year, it is necessary to start making our plans for the year-end shutdown.

This year, as in the past year, our plant will close for a period of two weeks EXCEPT for maintenance and clean-up. The dates are as follows:

LAST DAY OF WORK - DECEMBER 20TH, 1974

PLANT CLOSED - DECEMBER 22ND, 1974
THROUGH JANUARY 5TH, 1975PLANT REOPENS ON REGULAR SCHEDULE
OF SHIFTS ON JANUARY 6TH, 1975

Once again, we are asking for those employees with three or more weeks vacation privileges to take at least one week of their 1975 vacation along with their year-end vacation.

In the past, cooperation on this request has been almost 100%. We earnestly hope it will continue for this year and more to come.

In the next week or so, all those men entitled to three weeks or more vacation, will receive a form letter to check off and sign. Please indicate what your choice is and return to me as soon as possible.

Thank you

Charles Serwitz

CS/mm

G.C. 3 in mind

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260

6 C. Ex 4 in Eu.
by 2/2/76

December 11, 1974

To: Columbia Corrugated Container Corporation

Dear Sirs:

I have been advised that I am being layed off after work on Friday,
December 13, 1974.

Please note that I wish to waive my rights as stated in Article VII
of the labor agreement between Columbia Corrugated Container
Corporation and the Folding Box, Corrugated Box and Display
Workers Local 381. Rather than share the work for the first
30 days, I am willing to remain on layoff until work is available
and I can return.

Very truly yours

John Stallworth

9 C. 4 in evidence

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General Counsel's Exhibit#5

1A 123 (8-68)

Record of Employment

FOR UNEMPLOYMENT INSURANCE PURPOSES ONLY

G.C. Ex 5 Page 1
By 2/2/76 14 EU

To Be Filled in By Employee

Social Security Account Number 265585292

Name of Employee JOHN STALLWORTH

TO EMPLOYEE:

KEEP THIS CERTIFICATE

Take it with you if you apply for Unemployment Insurance. This certificate shows your job was insured. It does not necessarily mean you are qualified to receive benefits. Your insurance office will make that determination if you apply for benefits.

To Be Filled in By Employer

N. Y. State Employer Registration Number

2671585

Firm Name:

Columbia Corrugated Container Corp.

Address at which Payroll Records Are Kept:

300 Michael Drive
SYOSSET, N. Y. 11791

OPTIONAL IF NEEDED BY EMPLOYER TO LOCATE EMPLOYEE RECORD

Payroll or Clock No.

Location of Employment or Code

THIS MAY NOT BE USED AS AN IDENTIFICATION CARD.

NEW YORK STATE DEPARTMENT OF LABOR

DIVISION OF EMPLOYMENT

- G. C. Ex 6 in EV

Jan 2/2/76

262

 COLUMBIA CORRUGATED
CONTAINER CORPORATION

BY-05887 - NEW YORK 11781

January 8, 1974

Mr. John Stallworth
969 Gates Avenue - Apt. 204
Brooklyn, New York 11221

Dear Mr. Stallworth:

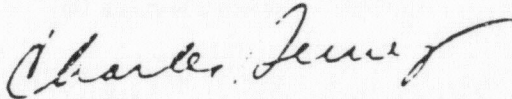
Following your layoff, you were to return to work on January 6th, 1975.

You did not return, nor have we heard from you for a period exceeding
72 hours. Company rules call for notification within 72 hours.

We therefore assume that you have quit your job.

Very truly yours

COLUMBIA CORRUGATED CONTAINER CORPORATION



Charles Serwitz
President

CS/mm

263a

CASE NO: 75-02659

-2-

Claimant did not quit. He did not receive word that he was due to be back. It is significant that the employer gave claimant a printed form to sign as a waiver and sent a typed letter to claimant stating that it was assumed he quit, but sent no written notice to claimant that he was supposed to return.

DECISION: The initial determination is overruled.

/s/ MILTON S. EISENSTAT
Referee

CO

NOTICE OF DECISION

TO ALL PARTIES:

Please take notice that as a result of a hearing before an Unemployment Insurance Referee, the decision herein was made and has been duly filed on the date listed on the face of this decision.

IF YOU ARE NOT SATISFIED WITH THE DECISION, YOU MAY APPEAL. SUCH APPEAL MUST BE TAKEN BY YOU WITHIN TWENTY (20) DAYS FROM THE DATE LISTED ON THE FACE OF THIS DECISION.

Any party who, for good cause, failed to appear at the hearing, has the right to reopen the case by making application to the local office within a reasonable time and establishing such good cause before the referee.

APPEAL INSTRUCTIONS TO CLAIMANTS:

If you wish to appeal, do the following:

1. Within the 20 day period, go to your local office.
2. Take this notice with you.
3. Tell the person in the local office to whom you report that you wish to appeal. Tell him why. Ask him for an appeal form on which you will state your reasons for appeal and which you will sign.
4. If, for any reason, you cannot go to the local office within the 20-day period, you may write a letter to the local office within such period, stating you wish to appeal and giving your reasons.
5. Claimants who appeal are not required to make any money deposit on taking an appeal.

IF YOU HAVE ANY QUESTIONS OR DOUBTS ABOUT THE MEANING OF THIS DECISION TAKE IT TO THE LOCAL OFFICE WITHIN THE 20-DAY PERIOD. INQUIRE THERE IF YOU SHOULD CONTINUE TO REPORT AND WHAT ELSE YOU MUST DO.

APPEAL INSTRUCTIONS TO EMPLOYERS:

If you appeared at the referee's hearing and wish to appeal from this decision, you may file a notice of appeal within twenty (20) days from the date listed on the face of this decision with the local office listed on the face of the decision

ALL PARTIES WILL RECEIVE A NOTICE OF RECEIPT OF APPEAL DIRECTLY FROM THE APPEAL BOARD AFTER ANY APPEAL IS TAKEN.



263
NEW YORK STATE DEPARTMENT OF LABOR
Unemployment Insurance Referee Section
THE WORLD TRADE CENTER
NEW YORK, N.Y. 10047

G.C. 47 KARL
TW 2/2/76 EU
IRVING ABERNETHY
JOSEPH H. PRITCHARD
SENIOR REFEREE
ABRAHAM SOL
SENIOR E.S. MANAGER

AARON N. FEDER
SUPERVISING REFEREE

DECISION AND NOTICE OF DECISION

In the Matter of:

John W. Stallworth

969 Gates Avenue
Brooklyn, New York 11221

R

Referee # 75-02659

S.S.A. # 265-58-5292

DECISION MADE AND DULY FILED IN THE

DEPARTMENT OF LABOR ON FEBRUARY 27, 1975

New York State Department of Labor

Local Office #561

107 Lawrence Street

Brooklyn, New York 11201

Columbia Corrugated Box

300 Michael Dr.

Syosset, L.I., New York

FINDINGS OF FACT:

A hearing was held at which claimant appeared and testified. A statement was submitted on behalf of the Industrial Commissioner in lieu of appearance.

Claimant was disqualified, by initial determination effective January 6, 1975, because of voluntary leaving of employment without good cause.

Claimant, a headsetter, worked for the employer herein from January, 1972 to December 13, 1974. His salary was \$194 for a 40 hour week. He was a member of a union.

At the time of claimant's layoff on December 13 he was given a mimeographed form dated December 11, 1974 which said as follows:

"Dear Sir: I have been advised that I am being laid off after work on Friday, December 13, 1974. Please note I wish to waive my rights as stated in Article 7 to a labor agreement between Columbia Corrugated Container Corp. and Corrugated Box and Display Worker's Local 381. Rather than share the work for the first 30 days I am willing to remain on layoff until work is available and I can return".

Claimant refused to sign this waiver of his rights under the union contract. He was not called back orally or in any other way. On January 8, 1975 claimant received a letter in which the employer stated it assumed he had quit his job because they had not heard from him for 72 hours at the time he was to report on January 6, 1975.

Claimant, who lives in Brooklyn, came to the hearing in Hicksville. The employer's representative sent a letter stating it could not appear because of business pressure.

OPINION: Claimant's sworn and consistent testimony to the fact that he was never notified orally or in writing that he should return is given credence.

Claimant hoped that he would be called back the 6th or 7th of January, 1975 but he was not so called back. Other people with greater seniority than claimant and laid off the same time as claimant or one week later on December 20 have still not been called back.

0 264 0

INTRODUCTION

These Rules and Regulations have been prepared to supply you with specific information which governs the relationship between the Management and the Employees of this Company.

Your employment with this Company is an important matter, both to you as an individual and to the Management. With the materials and equipment which Management contributes, you as an Employee contribute your effort and skill to make a product which is of value to other people.

Our Company is dedicated to the principles of turning out a good product, conducting a fair business and maintaining a firm feeling of cooperation and friendship between the Company and all of the Personnel.

It is important that you read these Rules and Regulations carefully, as the knowledge of what it contains will help in your daily work. Should any questions arise which are not covered, do not hesitate to ask your Supervisor. He is here to help you.

COLUMBIA CORRUGATED CONTAINER
CORPORATION

Rx 2 feet
rec'd
2-3-74
P.R.

0 265 0

GENERAL POLICIES

This statement of policy is intended to make clear to all persons concerned, the principles for which this Company stands by which it proposes to be guided in its Employee relations. Toward this end, the following statement of policy, consistently adhered to, will reduce the possibility of misunderstanding.

ARTICLE I - SELECTION OF EMPLOYEES

The Company selects Employees on the basis of building up a friendly, competent working force. Accordingly, selection will be based on the applicant's qualifications for the job.

ARTICLE II - SUGGESTIONS

The Company encourages and welcomes constructive suggestions as to methods, products, safety and working conditions.

ARTICLE III - CHANGE OF ADDRESS

It is important to have the correct address of every employee. Notify the Personnel Department immediately of any change of address or telephone number.

ARTICLE IV - BULLETIN BOARDS

All Employees are expected to read notices posted on bulletin boards and to comply with them. Bulletin boards are for official business of Union and Company.

ARTICLE V - EXITS AND ENTRANCES

Employees must enter and leave the plant through the main door in front of the building near the time card rack. Other exits may be used in emergency only. Anyone opening unauthorized doors, will be subject to immediate discharge.

ARTICLE VI - ADMITTANCE TO PLANT

Visitors and employees not on regular duty are required to obtain permission at the office before entering the plant.

Employees reporting for second shift operation will proceed immediately to recreation room (Cafeteria), locker room. These rooms will be open for one-half hour before shift starts and during break and lunch periods only. Locker Room will remain open one-half hour after shift ends.

ARTICLE VII - TELEPHONE CALLS

Employees are not permitted to make or receive telephone calls during working hours. Telephone messages will be delivered to Employees only in case of an emergency.

0 266 0

9:00 A. M. to 5 P. M. - Call 516 - 921-4700

The above numbers are to be used in cases of emergency only. Emergencies do not include babies with stomach aches, loss of house keys or other ordinary events. They are meant to include severe accidents or sudden illnesses which cannot wait.

ARTICLE VIII - CALL IN SCHEDULE

Employees are to call in reporting their absence as per the following schedule, on the day they are to be absent

<u>Shift</u>	<u>Call in Time</u>	<u>Telephone No.</u>
1st	7:00 A. M. to 11:00 A. M.	516- 921-4700
2nd	12:00 P. M. to 4:00 P. M.	516- 921-4700

Disciplinary action will be taken with any employee not adhering to the above schedule.

GENERAL RULES

ARTICLE I - SHIFT WORKERS

At the end of a shift, no employee shall leave his station until replaced by his oncoming shift mate. If his mate does not report, the employee on duty is to report such absence to the Supervisor in charge. He shall remain at his station until replaced.

ARTICLE II - CAUSES FOR DISCHARGE

Each employee is required to work efficiently and conduct himself properly. Causes for discharge include, but are not limited to, the following:

A Violation of any of the following may result in immediate discharge

1. Deliberate or careless destruction or removal of the Company's or another employee's property.
2. Reporting to work under the influence of, or bringing onto the premises, alcoholic beverages or drugs
3. Gambling of any kind.
4. Misstatement of facts on the written application for employment
5. Punching, altering, removing or handling the time card of any other employee.

6. Falsifying time or production records or intentionally giving false information to anyone whose duty it is to keep such records.
7. Giving or taking a bribe of any nature, as an inducement to obtaining work or retaining a position.
8. Leaving his machine or station without permission from his Supervisor or Foreman at any time.
9. Disorderly conduct (Horseplay, fighting, immoral conduct).
10. Neglect of duty, disobedience, and/or insubordination.
11. Refusal to comply with the Company's Safety Rules.
12. Having a number of injuries through self-negligence.
13. Smoking on the Company's premises in prohibited areas and thereby violating Insurance and Fire Department regulations.
14. Using abusive or threatening language to anyone while on duty.
15. Leaving building during working hours.
16. Eating anywhere in the plant other than in the Cafeteria, or at any time other than break or lunch periods.
17. Participating in practical jokes or pranks while on the Company premises.
18. During working hours:
 - a. Being inattentive to duties
 - b. "Soldiering" on the job
 - c. Reading on duty, except when required by work.
19. Not being at place of work when signals are given:
 - a. At the start of each shift
 - b. At the end of each rest period and lunch period
20. Poor housekeeping habits.
21. Absent for more than a 48 hour period or longer without notifying the Company.

ARTICLE III - ABSENTEEISM AND TARDINESS

Employees absent or late for work without permission or a legitimate reason, shall receive during a three month period:

- 1st Offense - Warning
- 2nd Offense - One day layoff
- 3rd Offense - Three day layoff
- 4th Offense - Discharge

If absent due to illness, a doctor's note will be required of the employee before being permitted to return to work. The employee is to report to the First Aid Room immediately upon his return to work.

It is further understood that he is not absent with justifiable cause if he is absent because of the following:

- a. On leave of absence initiated by himself or
- b. If he merely fails to report because he does not care to work, or
- c. Employees failing to notify the Company of absence within the designated schedule (see Page 3) shall be considered as separated from the Company payroll.

ARTICLE IV - SUB-STANDARD PERFORMANCE

Employees working at a sub-normal performance will be subject to discipline in the following manner:

- 1st Offense - Warning
- 2nd Offense - 2 day layoff
- 3rd Offense - 1 week layoff
- 4th Offense - Transfer or Discharge

ARTICLE V - IMPROPER PUNCH OR FAILURE TO PUNCH TIME CARDS DURING A THREE MONTH PERIOD

- 1st Offense - Warning Notice
- 2nd Offense - 1 day Layoff
- 3rd Offense - 3 day Layoff
- 4th Offense - Discharge

All time cards must be punched as follows:

- 1. Before shift begins
- 2. When going out to lunch
- 3. When returning from lunch
- 4. After work shift ends

EXCEPTIONS"

Authorized persons working through lunch or outside Company area.

Cards should never be punched earlier than ten minutes before starting bells or more than five minutes after stopping bells.

Failure to follow these rules will result in loss of pay.

0 269 0

ARTICLE VI - QUALITY

Employees failing to conform with job and factory specifications during two month period, will be subject to discipline by the Company. It is imperative that we maintain the high quality standard that we are noted for and we cannot tolerate any deviations from set procedures and quality specifications requested by various customers. Should any question arise during the performance of your job, be sure to contact your Supervisor of Quality Control. They are here to aid you with such problems. You will be held accountable for not adhering to the above.

- 1st Offense - Warning Notice
- 2nd Offense - 2 day layoff
- 3rd Offense - 1 week layoff
- 4th Offense - Transfer or Discharge

ARTICLE VII - TOOLS AND EQUIPMENT

It is required that all employees maintain their equipment in good working order. Tools entrusted in the care of any employee is understood to be the responsibility of the employee. Proper care and attention is necessary to prevent machine breakdowns or lost tools.

Disciplinary action will be taken with any employee, who after being taught the proper use of equipment or tools used, creates damage or loses tools through careless ness.

ARTICLE VIII - LOCKER DRESSING-LUNCH ROOMS

The Company has gone to a great expense in setting up new Locker-Dressing and Lunch Rooms for your convenience and relaxation. All employees are required to cooperate in maintaining clean rooms, so that full benefits can be derived by all. It is the responsibility of each employee to see to it that no one abuses the equipment, and that the rooms are kept in good housekeeping order. Please use the receptacles provided for your empty containers, wrappings, etc. We expect everybody to cooperate. Anyone abusing this privilege will be subject to disciplinary action.

YOUR PLACE OF WORK IS YOUR "HOME AWAY FROM HOME"

TREAT IT AS SUCH

270

January 8, 1975

Mr. B. Cianciulli
Local 381
170 Old Country Road
Mineola, N. Y. 11501

Dear Mr. Cianciulli:

Please be advised that John Stallworth did not return to work on January 6th, 1975, and has not been in since. We have not heard from him and therefore assume that he has quit his job.

Please mark your records accordingly.

Very truly yours

COLUMBIA CORRUGATED CONTAINER CORPORATION

Charles Serwitz
President

CS/mm

Handwritten:
Rt 3
2-3-76
P. 12
[Signature]

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 77-4091
	)	
COLUMBIA CORRUGATED CONTAINER CORP.)	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

The undersigned certifies that one (1) copy of the appendix in the above-captioned case have this day been served by first class mail upon the following counsel at the addresses listed below:

Charles R. Katz, Esq.
360 Lexington Avenue
New York, New York 10017

Margiotta, Levitt & Ricigliano
955 Front Street
Uniondale, New York 11553

Elliott Moore

Elliott Moore

Elliott Moore

Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D.C.

this 21st day of June, 1977.